

**AMERICAN FOREIGN POLICY :
AN IMPERATIVE FOR PRESIDENTIAL
AUTHORITY?**

Audrey P.H. McDonald

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"American Foreign Policy: An Imperative for Presidential Authority?"

Audrey P.H. McDonald

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Abstract.

The American Constitution is over two hundred years old. It was the product of the times and reflects the two images of government, Presidential and Congressional. The memories of both the Continental Congress and George III played an important part. However, the imperative of strong leadership, more especially in the twentieth century as the United States withdrew from isolationism and confronted two world wars and an international depression, and a hostile environment, dictated that the President became the pre-eminent branch of government. For the most part political thinking and public opinion extolled this steadfast and virtuous leadership, while Congress largely submitted to Presidential domination. However, the Vietnam War, and later Watergate radically shook this consensus. The war was perceived to be the President's war; it was seen as the product of an "Imperial Presidency". The President was blamed for America's involvement in Indochina, and this together with Watergate, appeared to symbolise a Presidency out of control.

Congress was shamed and felt responsible for the rise of the Imperial Presidency. Thus, in the wake of the Vietnam War and Watergate, Congress sought to assert its long eroded prerogatives. The 1970s witnessed a series of legislative initiatives intended to curb the Imperial Presidency in foreign policy. However, Congress reasserted itself with such fervour and determination that the whole future of American foreign policy was put to risk, especially with regard to coherence, continuity and flexibility. The 1970s legislation greatly limited the President's range of options in foreign policy.

America, a superpower, cannot conduct a coherent foreign policy with two heads at the stern. The international system necessitates strong purposive leadership, leadership which can only be furnished by the President.

Congress plays a vital role as regards discussion and consensus formation, but the time has come for Congress to recognise that it cannot compete with the President in foreign policy formulation and implementation. To try threatens the future success of American foreign policy.

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Introduction.

The Constitutional struggle between the President and Congress is inherent in the American system of government. As such one approaches the analysis and discussion of American politics with this aspect foremost in consideration. One might naturally assume that this "separation of powers" is most expedient to the exercise of power, one branch checking and restraining the potential aggrandizement of the other.

However, during the course of one's research one was compelled to recognise the often detrimental aspect to this system of government, separate institutions sharing power. Separation promotes competition and the drive for power for its own sake rather than its own good. As such the main objective of this thesis was to determine which branch of government was most suited to the effective exercise of power in foreign policy.

The Vietnam War and Watergate heralded a revolution in American foreign policy. The 1970s witnessed a resurgence in Congressional assertiveness, the repercussions of which are still reverberating over two decades later.

The Founding Fathers as is shown in Chapter 1 had struggled to fashion a system of checks and balances at the Constitutional Convention, but early into the nation's history, the President proved to be better able to manage the needs of the modern world and more willing to use the means at his disposal.

The revolution in the wake of the Vietnam War and Watergate radically altered academic thinking on the Presidency, most of which had extolled a strong President. New literature appeared which accused the Presidency of abusing its power, of becoming the "Imperial Presidency"

Congress, long submissive and compliant, was jolted into action, and throughout the 1970s the legislature attempted to proscribe the President's authority and freedom of action in foreign policy. Although this action was

well intended, it is the central argument of this thesis that the outcome was detrimental to the overall success and integrity of American foreign policy. For example, the War Powers Resolution, supposedly the height of Congressional assertiveness and intended to enhance Congress' role in foreign policy, has proved to be ill - founded, ill - conceived, open to interpretation and actually a further augmentation of the power of the Presidency as is shown in Chapter 4. It has not stopped successive Presidents from going to war or increased Congressional participation in the decision.

This thesis attempts to demonstrate, especially in Chapters 4, 5, and 6 that Congress is not well designed to cater for foreign policy needs, in contrast to the Presidency, which is united in the person of the President.

The biggest threat is that the continuing congressional interference in American foreign policy will sap United States authority in the world. Congress has sought greater control of American foreign policy, but what is gained if that foreign policy is rendered less effective? Domestic accountability may increase but at the cost of coherence and direction in the international arena. It is time for Congress to recognise the immense capability and virtue of the Presidency in the modern age; Congress can not compete, and really should not even try.

Chapter 1: The Constitution of the United States of America.

"Your Constitution, Sir, is all sail and no anchor."¹

"The doctrine of the separation of powers was adopted by the Convention of 1787...not to promote efficiency but to preclude the exercise of arbitrary power."²

"It is an axiom of American history that the Constitution came from the Framers as 'a bundle of compromises'".³

The American Constitution of 1787 was an experiment necessitated by the failure of the Confederation. As the United States emerged victoriously from the war with Britain there had been considerable doubt as to what form the new government would take, although little doubt as to the fact that the American people did not wish to have a monarch. The painful lessons of colonial government and of relations with the King remained vivid. During the four years between the American peace treaty with Britain in 1783 and the opening of the Constitutional Convention in 1787, the foreign affairs of the United States did not present any immediate danger, but the country was weak.⁴

In 1776 eight states adopted written Constitutions; all, but New York adopted a system with a supreme legislature and a weak, nearly totally subordinated executive. The dominant feeling during much of the pre-revolutionary period was one of hostility to the executive, an executive represented by the King.⁵ The Continental Congress in 1787 adamantly rejected a proposal that would have mandated to Congress the appointment of an executive council for managing the affairs of the United States.⁶ All that was provided for was a committee of states to sit while Congress was not in session, committees which had no military, diplomatic or fiscal

powers.⁷ These Congressional committees, unable to adequately administer the affairs of the thirteen independent states and with no power to raise money, had to rely on the states' voluntary cooperation. Indeed, George Washington was often greatly frustrated over the inability of Congress to impel the states to act in concert. At times, during his eight years as General of the Continental Army, he feared the Revolution would be lost due to lack of unity among the states rather than to any problems posed by Britain. In a letter to Washington in 1779 John Jay noted the outstanding faults of the committee process as "want of system, attention and knowledge".⁸ Authority was vested in a one house legislature, the Continental Congress, and each state possessed a single vote regardless of its population and political importance.

Despite the inadequacies and failings of the Continental Congress, the Articles of Confederation which took effect in 1781 "in turn created weak national government, with a weak congress, lacking power even to levy taxes and checked directly by the state legislatures, and a 'token' executive occupying the meaningless office of President".⁹ The positive approval of nine states was necessary in most matters having to do with war, treaties and major appropriations, which was virtually impossible to achieve when after the war the states again went their separate ways. The Secretary of "foreign" affairs was responsible to a committee of Congress which kept him in tight rein. Jay, who held office as Secretary of Foreign Affairs initially in 1784, certainly knew more of European affairs than any member of Congress, having been posted as Foreign Minister to Spain. Congress itself was impotent before the thirteen state governments, "so it could neither retaliate effectively against foreign humiliations nor negotiate to lessen or remove them".¹⁰ For example, when Congress asked the states to pass tonnage or tariff restrictions against British trade, most states

complied one way or another, except Connecticut whose free trade policy cancelled the laws of her neighbours.

A critical situation existed in which no money was going into the Federal Treasury. There was not even respect for federal authority. So long as pay claims remained unsettled, the army remained a powerful force. Without a reliable authority Congress could not intervene decisively in the struggles between debtors and creditors and this lack of power led to such outbursts as Shay's Rebellion.¹¹

Starting in 1787 Congress took the first step in the direction of a separation of powers when it appointed single officers to head certain departments and programmes. However, these officers soon became disenchanted because they felt limited to what Congress had declared in a public act. Yet the scope and powers of these officers did expand as the scope for administrative efficiency widened. As Cronin has shown, "slowly an evolving separation of powers and the idea of an national executive were becoming apparent".¹²

Under the Articles of Confederation, Congress had found it impossible to speak for a united America. The Founding Fathers who came to Philadelphia believed that only a strong national government could cope successfully with the political and economic problems at home and give the United States such status in the world as would command respect abroad. The Founders sought a "more perfect Union". Later, in Federalist 10,¹³ Madison stated, "Among the numerous advantages promised by a well - constructed union none deserves to be more accurately developed than its tendency to break and control violence or faction". An executive, the Founders also perceived, was vital to negotiate treaties and conduct and implement foreign policy, especially trade relations. Not only was an executive important for effective administration but Congress had proved itself to be incompetent in such matters. Between 1776 and 1787 there was enough experience with state legislatures to destroy naive assumptions about their inherent benefit.

James Madison, who had gained his political experience first as a member of the Virginia Legislature and later as a leading figure in the Congress of Confederation argued, "Experience has proved a tendency in our government to throw all power into the legislative vortex. The Executives of the states are, in general, little more than cyphers, the legislatures omnipotent. If no effective check can be devised for restraining the instability and encroachment of the latter, a revolution of some kind or another would be inevitable".¹⁴

Thus, initially the Philadelphia Convention was called not to write a new governing document but to remedy the perceived defects of the Articles of Confederation. Power in the states and then in the Confederation Congress had passed by the 1780s into the hands of agrarian radicals. The movement for the new constitution was in part a reaction by various elites to that development, and not only to the weakness of the Confederation Government. The delegates to the Constitutional Convention represented the sovereign states, the primary centres of power under the Articles of Confederation. State sovereignty presented delegates with their most serious problem. As a result, the Convention undertook to create a national government that would be a new centre of power, superior to the states, yet not depriving them of their local powers and responsibilities. The Framers of the Constitution built a structure that they thought of as a federal republic. They realized that they were pioneering in political institutions. A federal republic involving a careful balancing of powers as between the new nation and the older states was a novelty. The Founding Fathers boldly ventured into an unmapped political arena.¹⁵

In foreign affairs as in domestic, the solution to problems under the Articles of Confederation appeared to lie in two changes: (1) more power to a federal government and, (2) the creation of a federal executive which could focus policies and actions, and in the case of foreign affairs present a single face to the outside world. As Cronin notes, "both history and

experience pointed to the need for a single executive who would complement legislative policy-making".¹⁶

The fifty-five Founding Fathers were among America's best educated and most experienced men. Their average age was forty-two and they were largely comprised of lawyers and businessmen. Two-thirds had served in Congress, twenty-one had fought in the revolutionary war and seven were state governors. "It was a convention of the well-bred, well-fed, well-read and well-wed".¹⁷ The Founders themselves, shaped by their British, colonial and confederation experiences were uncertain who should make American foreign policy. Their "invitation to struggle"¹⁸ reflected their own ambivalence about the appropriate balance between swift action and clear command on the one hand and popular support and checked and balanced power on the other.¹⁹

The deliberate and ambiguous mixing of foreign policy powers in the Constitution came first from the perception of the British experience and the theoretical foundation thereof. Certainly the Founders did rebel against the British experience but they also borrowed from its ideas and culture. They were after all British in background and accustomed by practice to British governing institutions.

The British experience in the three centuries before American independence involved violent fluctuations in the distribution of power among the branches of government. Strong executive leadership under the Tudors and Stuarts in the late fifteenth and sixteenth centuries was followed by civil war and the beheading of Charles I by a supreme parliament, which in turn was followed by a military junta. When George of Hanover became King in 1714, a period of relative stability ensued which ended with the ascendance to the throne of George III. Thereupon, there followed active struggles for ultimate control between the King's ministers and parliament. Therefore, the British experience was perceived to be one of fluctuating periods of executive and legislative dominance, with some interludes of cooperation. Thus, "British constitutionalism first defined the separation of powers that

became the basis of the American Constitution".²⁰ For their own needs, however, the Founders considered it vital to mix these powers to create a better balance.

On the philosophical side, the English philosopher John Locke had argued for supreme power to reside in legislative hands, but he also supported the notion of some executive prerogatives. Ornstein argues, "What Locke gives us in the final analysis is not legislative supremacy really but a... 'balanced constitution'".²¹ Also of great influence was Montesquieu,²² whose writings had appeared to show the absolute necessity of separating legislative, executive and judicial powers. Broadly speaking, the Founders expected that foreign affairs, like domestic, would have separate policy-making and policy administration components; the former to be the responsibility of Congress, the latter the responsibility of the executive.

The Founding Fathers themselves had several alternatives in mind. The first option was a council of states as a plural executive to administer departments. Such an executive would be part of a system of legislative supremacy in national government. The second option was for an executive branch that would share power with the legislature subject to a system of checks and balances. The third involved a strong executive invested with executive powers. The Founders feared concentrated executive power, but they yearned also for a more effective governing capability that would include the ability to negotiate treaties, conduct diplomacy and administer the growing functions of national government. Thus, the founders' task was to create an executive institution that could be reconciled with representative government and the ideas of republicanism.²³ The overriding priority was to construct a national political system that was effective and safe. The Founding Fathers believed that more government was necessary if America was to survive and prosper.

Therefore, the Framers acted against the backdrop of two explicit fears. Firstly, the last thing they wanted was a "reincarnation" of a George III on

American soil, but secondly, they also feared popular uprisings and unchecked democracy that had come to a climax with Shay's Rebellion. The experience of the Founders led them to seek more centralization of authority than they had known under the Articles of Confederation. The Virginia Plan,²⁴ which the Convention took as its starting point was very much the child of Madison. What Madison proposed was the demolition of the Articles of Confederation and the erection in its place of a strong national government on a popular foundation.

Decisions that Established the Constitutional Dimensions of the Presidency.

Although the Convention's great crisis developed over the representation in the legislature,²⁵ the delegates spent a greater amount of time thrashing out certain vexatious problems relating to the executive.

The Convention rejected the idea of a collegial executive or a council. In the debate, Sherman of Connecticut, who favoured the election of members of Congress by the state legislatures, argued that the number of the executive should "not be fixed but...the legislature should be at liberty to appoint one or more as experience might dictate".²⁶ Randolph, Governor of the State of Virginia, then proposed an executive council of three men, maintaining that "unity in the Executive magistracy" entailed the "foetus of monarchy".²⁷ However, Gerry of Massachusetts argued that a plural executive would, in military matters really be a "general with three heads".²⁸ Gouverneur Morris of Pennsylvania, viewing the executive as protector and the legislature as the threat, argued, the "Executive Magistrate should be the guardian of the people, even if the lower classes agst.(sic). Legislative tyranny, against the Great and the Wealthy who in the course of things will necessarily compose the Legislative body".²⁹ Wilson, Pennsylvania, leader of a strong executive faction, wanted a "single magistrate, as giving most energy, dispatch and responsibility to the office".³⁰ It was also the best safeguard

against tyranny. As chairman of the Committee of Detail, Wilson had the opportunity to incorporate his conception of the office into the draft of the Constitution.

Still unsolved remained the question of restraining the executive by a council. While debating the provision for the President to require the opinion in writing of the heads of departments, Mason of Virginia argued that in rejecting a council to the President, "we were about to try an experiment on which the most despotic Governments had never ventured - the Grand Signor himself had his Divan".³¹ He went on to propose a Council of State for the President made up of six members, two from Eastern, two from Middle and two from Southern states, with a rotation and duration of office similar to those of the senate and appointed by Congress or the Senate. Franklin of Pennsylvania, agreed, regarding the council as a check on a bad President and an aid to a good one. However, the idea of a council was rejected as it was judged that the President "by persuading his council to concur in his wrong measures, would acquire their protection..."³²

The Virginia Plan called for a national executive to be named by electors chosen by Congress. Sherman of Connecticut argued that the executive be only an "institution for carrying the will of the Legislature into effect" and consequently, executive officials should be "persons...appointed by and accountable to the Legislature only".³³ Wilson proposed the choice of President by electors chosen by the people, but this motion was defeated. As Mason argued, "it would be as unnatural to refer the choice of a proper character for chief Magistrate to the people, as it would to refer a trail of colours to a blind man".³⁴ Thus, initially the popular election plan failed, and the Convention reaffirmed legislative election unanimously. However, Morris of Pennsylvania and Madison contended that the executive should be independent of the legislature and by way of compromise the convention switched to electors, but provided for their choice by state legislatures. The Convention, however, then reverted back to its original

plan for legislative election and as such the proposal went to the Committee of Detail, which had to decide how Congress would vote for the President. However, the matter was so completely in dispute that it was passed to the Committee of Eleven³⁵ where a compromise decision was reached. It was decided that electors equalling in number Senators and Representatives from the states and appointed by the states, be responsible for their election of the President. With the acceptance of the Electoral College, the Convention finally cut loose from the notion that the President should be politically accountable to the legislature rather than the people. Thus, one can readily appreciate Hamilton's impression of the executive in Federalist 67 when he writes, "there is hardly any part of the system the arrangement of which could have been attended with greater difficulty...".³⁶

The Convention also decided upon a broad appointing power for the President. Wilson argued that "a principal reason for unity in the executive was that officers might be appointed by a single responsible person".³⁷ Madison favoured the appointment of judges by the Senate, the Senate being the more stable and independent branch of the legislature. Gorham's (Massachusetts) proposal for executive appointment and consent was originally rejected. The principle of Senatorial appointment was reaffirmed and the decision passed to the Committee of Detail. Its report gave general appointing power to the President but allocated judges and ambassadors to the Senate. The Committee of Eleven in contrast, granted the appointment of Supreme Court judges, ambassadors and all other officers to the United States whose appointment was not otherwise provided for, to the president with Senate advice and consent. It was this formula that was finally accepted.³⁸

Checks and Balances

After extended debate, the office of the President would finally find expression in Article II of the Constitution. Once the office had been created, the Framers were compelled to consider how to prevent abuses of power. One technique was to provide for the collaborative exercise of powers.³⁹

Two Interpretations of One Constitution.

"In short, the Constitution reflects the struggle between the two conceptions of office: that it ought always to be subordinate to the supreme legislative power, and that it ought to be, within generous limits, autonomous and self directing".⁴⁰

Hypothesis I: Protection Against A Power – Hungry President.

One Interpretation of the American Constitution.⁴¹

Foreign-policy making was to be in the hands of Congress given the fact that it was Congress which was given the indisputable pre-eminence over the power of the purse. Deliberations of the Constitutional Convention indicate that the Founders knew very well that controlling money, appropriations and taxes meant controlling policy. The significant role to be played by Congress is demonstrated by the document of the Constitution itself. Of the eighteen powers given to Congress in Article 1, Section 8, seven are related directly to foreign policy while several, most notably, treaty ratification, the power of appointment and the power to declare war are dominant.

War-making.

Discussion at the convention of the power to conduct war focused on two points: firstly, the role of Congress and secondly, the various roles of the Senate and the House. With regard to Congress as a whole, the Founders had an extensive debate over whether to assign Congress the power to "declare" war or "make" war. The original draft constitution had assigned Congress the power to make war, but Madison argued that the word "make" should be changed to "declare", leaving the executive the power to repel sudden attacks. Others argued that this notion was already implicit. When the Founders settled on the term "declare war", it is clear that their intention was to enable the President to repel sudden attacks without requiring Congressional approval, but anything other than a sudden attack and that allowed time for congressional debate was to be a decision in the hands of the legislature.

Members such as Charles Pinkney of South Carolina wanted to leave the war power in the hands of the Senate alone, the Senate being the chamber already involved in foreign policy. However, the delegates insisted that such a grave national consideration should definitely be vested in both Houses.

In the Constitution, Congress was also given the power to "raise and support armies" and to "provide and maintain a navy" and the power to regulate the armed forces. The President was to be Commander-in-Chief but the lack of significant debate, together with minimal attention in the ratification debate and the Federalist Papers leaves considerable doubt as to the role the Founding Fathers envisaged for the executive as Commander-in-Chief. As Schlesinger states, "above all the Founders were determined to deny the American President what Blackstone had freely conceded to the British King, the 'sole prerogative of making war and peace'".⁴² Indeed, Hamilton did argue in Federalist 69 that the President's powers as Commander-in-Chief "would be nominally the same with that of the King of

Great Britain, but in substance much inferior to it".⁴³ It would amount to nothing more than the supreme direction of the military and naval forces. Abraham Sofaer contends that the limited debate at the Constitutional Convention reflects the Founders' intention to give more authority to Congress. Totally missing was any debate that would have accompanied an understanding of the Commander-in-Chief clause as creating an undefined reservoir of power to use the military in situations unauthorised by Congress.⁴⁴

Treaty Power

Major debate centred around the role of the President, some delegates maintaining that the President should act mainly as an agent of the Senate in negotiating treaties; others arguing for a much more positive and active role for the President. In a monarchy the power to make treaties was almost always vested in the executive. However, Congress had exercised under the Articles of Confederation. Thus, it seemed natural to divide the power, specifying that the President should act with advice and consent of the Senate; many deemed the House too flighty and cumbersome for the requirements of diplomacy. The Convention also followed the precedent of the Articles of Confederation in requiring a two-thirds majority in the Senate to approve a treaty in order to safeguard the rights of a large regional minority. The ultimate allocations of power reflected the Founders' desire to balance foreign policy roles. Certainly the President was given much greater leeway, but only to a degree for the Founders did not want a President unchecked in any area of foreign policy.

Power of the Purse

The Founders well knew that the root of power in government was the power of the purse. It was the power that parliament had used to exercise control over the British King. "The conscious decision to give this power to Congress reflected the underlying sense of the Founders that Congress was to be the 'first among equals' of the three branches".⁴⁵

Hypothesis II: Protection Against A Power- Hungry Congress.⁴⁶

"Liberty to be enjoyed, must be limited by law, for law ends where tyranny begins, and the tyranny is the same , be it the tyranny of a monarch, or of a multitude, - nay, the tyranny of a multitude may be greater since it is multiplied tyranny"

Burke.

"Contrary to today's prevailing view", writes Szamuely, the reason the Framers of the Constitution assigned specific responsibilities to the different arms of the government was not only to safeguard against the emergence of an over mighty executive. The fear of excessive power accruing to the legislature was at least as great".⁴⁷

An accumulation of legislative abuses on the state level, combined with a demonstration of legislative incompetence on the national, had spawned a new outlook toward executive power. A 1784 study of the Pennsylvannia government listed many instances of legislative violations of the state constitution and bill of rights. For example, the assembly had deprived persons of trial by jury. In 1785, Madison had suggested that the legislature should be told what it could not do rather than what it could. As John Adams stated,

"if there is one certain truth to be collected from the history of all ages, it is this; that the peoples' rights and liberties, and the democratic mixture in a constitution can never be preserved without a strong executive, or, in other words, without separating the executive from the legislative power".⁴⁸ One could readily argue that the predominant anxiety in 1787 was not over executive power or the threat of a dictator. In Wilson's opinion, the people of America did not oppose the British King, "but the parliament, the opposition was not agt (sic) an Unity but a corrupt multitude".⁴⁹ Wilson's great fear was that the "natural operation of the Legislature will be to swallow up the Executive"; Gouverneur Morris contended that the "Legislature will continually seek to aggrandize and perpetuate themselves".⁵⁰

Madison warned of this aggrandizement of the legislature at the expense of other departments in Federalist 49, while in Federalist 51 he continued, "the remedy for this inconvenience is to divide the legislature into different branches, and to render them by different modes of election and different principals of action, as little connected with each other as the nature of three common functions...will admit".⁵¹ The prospect of a legislative body possessed of the power of the purse, entrusted also with the task of creating the agencies of government and investing them the appropriate grants of authority, responsible for the collection of taxes, duties, imposts and excises, the payment of debts; to provide for the common defence and general welfare of the United States, to coin money, to regulate commerce and declare war, prompted many Founders to believe that the old evils of the previous system of government were again upon them. It was this fear which led to Article II of the Constitution. This Article makes it clear that the powers of the President, especially enumerated powers, are derived from the Constitution, and not derived from or limited by the legislative powers granted Congress in Article I. In other words, the

powers of the President are not those of Congress to confer on the executive nor could they be modified or rescinded by Congress.

The phrase, "Executive power" is very general and sufficiently ambiguous so that no one could say precisely what it meant. It is therefore possible to say that it referred to more than the enumerated powers that followed the term in the Constitution and might conceivably confer a set of unspecified executive powers.

Presidents, though responsible for the execution of laws and, therefore, the servants of Congress, would also be its masters for it was the President who was entrusted with the role of speaking for the nation as a whole in all its dealings with foreign states. It is worth recalling that the purpose of the Constitution was "to form a more perfect Union", and for the Founders that meant a union better able to conduct relations with other nations. For the Founders the conduct of foreign relations was "executive altogether".⁵²

The Presidential term of office was to be specified by the Constitution which could not be altered by any legislative decision without a constitutional amendment, otherwise, as Hamilton argued in Federalist 68, a President "might ...be tempted to sacrifice his duty to the complaisance for those whose favour was necessary to the duration of his official consequence".⁵³

By specifying that "the President shall... receive for his service, a compensation which shall neither be increased or diminished during the period for which he shall have been elected",⁵⁴ "the Founders clearly attempted to safeguard the prerogatives of the executive against the incursions of the legislature".⁵⁵

Certainly as regards treaties, the Constitution specified that a two-thirds majority was required for ratification, but this ratification procedure was restricted to only one house. By granting ratification to the Senate, the Founders signalled that they wanted to remove certain foreign policy decisions from the House and consequently direct popular control. The

two-thirds requirement was not only a check on the President. The Founders wished to limit the power of the Senate also and the two-thirds requirement meant that there was an effective check on the Senate as well.⁵⁶

As regards the power of the purse, this is not as extensive as may at first appear.⁵⁷ The power of the purse was not given unilaterally to the legislature for the President was given both the veto power and the authority to administer expenditures. Szamuely writes, "it was in order to restrain the parochial and vacillating will of Congress that the Framers granted the extraordinary power of veto".⁵⁸ The executive power of veto was granted by the Constitution so as to enable the national interest to override the sectional interest. The veto represented one means of self-defence for the federal Executive.

It would appear, thus, that the Founders envisaged the office of the President as the summit of government and not merely as the coequal branch.

Concerning war powers and the Commander-in-Chief clause, it is clear that the Founders, in changing Congress' power from "make" war to "declare" intended that the President be given substantial leeway. The lack of debate surrounding the Commander-in-Chief results in different interpretations of what was intended and leaves it uncertain as to the reach of the title. In stark variance to Sofaer's argument cited earlier, Koenig contends, "the Constitution's Commander-in-Chief clause provides another stout peg on which to hang wars and other violent engagements the President conducts with or without a declaration of war by Congress, and it enables the President to define the nation's stance in war between other belligerents".⁵⁹ The President, as Commander-in-Chief controlled an implied threat in peace time as well as the means for dramatizing his policies. One must also consider Hamilton's argument in Federalist 23 when he wrote, "the circumstances that endanger the safety of nations are infinite and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed".⁶⁰ In his capacity as the Commander-in-Chief, the

President would share with no other, least of all another branch of government, his authority over the armed forces of the nation.

To conclude, "both through its responsibility for efficient and swift dispatch of the affairs of state, and through its being the 'organ of intercourse between the nation and foreign nations' (Hamilton), the President, not the Congress, was to be assigned the task of national leadership".⁶¹ Hamilton in Federalist 70 writes, "taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire what are the ingredients which constitute this energy?...first, unity; second, duration; thirdly, an adequate provision for its support; fourthly, competent powers".⁶²

In brief, it can be concluded, that the Constitution specifies certain roles and functions for each arm of government. "But the allocation of powers could hardly be, in its nature clearcut", states Schlesinger, "and particularly in the case of the war power it was a matter, in Hamilton's phrase, of 'joint possession'".⁶³

The Separation of Powers, An Article of Faith.

"It is a widely accepted axiom of American political life that the Founding Fathers, in their abundant wisdom framed a constitution which created a government composed of three separate branches which were destined to exist in a contentious relationship",⁶⁴ writes Kahn. Power was to be separated. As Neustadt points out, "the Constitutional Convention created a government of 'separated powers'...Rather, it created a government of separated institutions sharing powers".⁶⁵ Implicit in this notion of shared power is constant competition and drive for greater power. "The abiding uncertainties", argues Schlesinger, "lie principally, almost wholly, in the separation, distribution, fragmentation of powers between the President and

Congress".⁶⁶ The division of powers in the conduct of foreign relations is not what it is in domestic affairs.

The separation of powers is inherently unstable. For example, regarding the war power, if the President were to claim all the implications of his control of diplomacy, he could, by creating an antecedent state of things, swallow up the Congressional power to authorize hostilities. If Congress were to claim all the implications of its power to authorize hostilities, it could swallow up much of the President's power to conduct diplomacy.⁶⁷

Certainly there is a "twilight zone" - a domain of Congress in which the President can also act. Indeed, after the Philadelphia Convention had adjourned, Madison confided to Jefferson that the boundaries between the Executive, Legislative and Judicial powers "though in general so strongly marked in themselves, consist in many instances of mere shades of difference".⁶⁸ In this zone, one finds concurrent powers where the two branches have interwoven responsibilities and competing opportunities.

The absence of a comprehensive "natural" division of power in foreign affairs has spawned a strong urge to compete for power or to claim concurrent authority. As Henkin argues, "instead of a natural separation of 'Executive' from 'Legislative' functions there has grown an irregular, uncertain division of each - all have served and nurtured political forces inviting struggle".⁶⁹ Each branch has an undefined residuum of inherent authority on which to draw - the President through Executive power and the Constitutional injunction that "he shall take care that the Laws be faithfully executed"; and Congress through the Constitutional authority "to make all laws which shall be necessary and proper for carrying into Execution ... all... Powers vested in this Constitution in the Government of the United States"

It was envisaged that all Constitutional disputes would be resolved by the Supreme Court. However, in practice the courts are unlikely to step into intense confrontations between the President and Congress. Whether this is

from the sense that the boundary between Congress and the President cannot be defined by law, whether from the realization of the inherent limitation of judicial power, or whether from prudence, "the courts will not make certain what was left uncertain".⁷⁰ Foreign affairs is especially vulnerable to being declared non justiciable.

The Constitution is silent on certain issues of import as to the conduct of foreign relations. For example, the recognition of foreign states, the authority to claim neutrality and the role of executive agreements are outwith Constitutional authorization. Thus, as Schlesinger writes, "the struggle began in the silences of the Constitution".⁷¹ However, according to Koenig, "in interbranch struggles over concurrent powers, the advantage most often lies with the branch that outraces the other in taking the initiative, whoever gets there first prevails. Generally the President has run faster than Congress and, therefore, usually occupies a far greater sector of the grey area".⁷² The problem is compounded when one finds that foreign affairs is not a term actually found in the Constitution.⁷³

Foreign Affairs, " Uncertainty in Principle and Conflict in Practice".

Foreign affairs is not a distinct constitutional category, therefore, the constitutional model regarding foreign affairs is incomplete and unclear. In its outlines the constitutional division of authority between the President and the Congress is reasonably clear: Congress makes laws and the President executes them; Congress levies taxes to provide for the common defence and general welfare and the President spends as Congress directs. However, as Henkin contends, "there is more to foreign relations than laws and expenditures".⁷⁴

The Constitution does not contain a power to conduct foreign relations. Few provisions deal with foreign affairs and in aggregate they do not constitute plenary authority. "The boundaries between the President and

Congress are fluid and cannot be defined; foreign affairs are not in fact separable and the machinery for running them cannot be isolated from the rest of government; nor could one transplant a new organ for the conduct of foreign affairs leaving the rest of body politic as is".⁷⁵ (Henkin)

It Has Been Life Under The Constitution That Has Began to Define the Meaning of the Constitution.

The Constitution is a 'fighting Consitution'.⁷⁶

"What was emerging, less from ideological prescription than from operational compulsion, was an executive perspective, a diffused feeling that the Executive branch, with superior information and direct responsibility, was the source of judgments to which Congress, without abdicating its separate powers should customarily defer".⁷⁷ For example, in the Constitution the President is empowered "to receive ambassadors and other public ministers" and although this can be construed as a purely ceremonial role, it can also imply that the President, in receiving a foreign envoy considers the envoy as representing a legitimate government with which the United States should have relations.⁷⁸ This process soon extended to war-making.

In 1793, Washington proclaimed neutrality in the war between Britain and France. In a series of articles signed 'Pacificus', Hamilton supported both the policy of Washington and his unilateral right to declare it. Hamilton contended that since foreign policy was by its nature an Executive function, the powers of declaring war and ratifying treaties bestowed by the Constitution on Congress were "exceptions out of the general 'Executive power' vested in the President". Compelled to reply, Madison, 'Helvidius', denied that the powers of making wars and treaties were inherently

executive, arguing that although they were royal prerogatives in Britain, that did not necessarily make them Presidential prerogatives in the United States. The view of Hamilton prevailed. Indeed, in Federalist 72, Hamilton defined executive power so expansively to encompass those royal prerogatives that he left the way clear for future Presidents to claim them. However, what is ironic about the Pacificus - Helvidius debate is that both Hamilton and Madison had served at the Philadelphia Convention, then afterward collaborated with John Jay on the Federalist Papers. They were thus uniquely placed to interpret the decisions of the Convention. The whole episode further emphasizes the ambiguity of the Constitution.

As so many controversies were left outwith explicit resolution at the Constitutional Convention and in the Constitution itself and because so much in the Constitution relied on overlapping and shared powers, the first few years of the new government were a time of testing. These years were crucial for setting a tone and establishing precedents. Washington's administration established a strong and vigorous role for the President in the foreign policy process and it was Washington who established the precedent that the executive could negotiate treaties without the prior advice of the Senate. However, it is interesting to note that Congress did not repudiate Washington's unilateral declaration of neutrality for the United States of America in the war between Britain and France.

During the first forty years of the new Constitution, the drift was toward more executive power in foreign relations. The President claimed the silences of the Constitution. Pious states, "He finds a general 'power to conduct foreign relations' for the nation. Then he assumes what has not been expressly assigned to Congress is to be exercised by the Executive. His grants of authority, such as 'The Executive Power' and the Commander-in-Chief title, are expanded through rules of construction to their limits. His powers when combined "result" in additional powers: sole organ of communication with foreign governments, alliance powers, war powers, peace

powers. He also claims inherent power as Commander-in-Chief to take emergency power to save the nation..."⁷⁹ Napoleon's maxim was quoted by Justice Jackson in the steel seizure case, and it is especially apt: "the tools belong to the man who can use them".⁸⁰

Compromises, Irresolutions, Oversights and Intentional Silences.

"The principal difficulty", notes Henkin, "has been that from the beginning, the compromises, irresolutions, oversights and intentional silences of the Constitution left it unclear who had sail and who had rudder, and, most important, where is command".⁸¹ The Constitution tells only half of what one needs to know. "No document originating as this had and developed as this had been developed could be logical or even consistent. That is why every attempted analysis of the Constitution has been doomed to failure. From the nature of its construction, the Constitution defies analysis upon a logical basis".⁸²

Chapter 1 Footnotes.

1. Macaulay, quoted in Louis Henkin, Foreign Affairs and the Constitution, (New York, Foundation Press, 1972), Chapter X1, p.271.
2. Justice Brandeis, Meyers v. U.S. 272 U.S. 52 293, (1926), quoted in Arthur M. Schlesinger Jnr, The Imperial Presidency, (Boston, Houghton Mifflin Comp, 1973), Foreword, p.V11.
3. Edward S. Corwin, The President: Office and Powers, 1787 - 1984, (New York, New York University Press, 1984), p.257
4. For example, American control of the West was challenged by Britain which refused to surrender a chain of border forts.
5. Norman J. Ornstein, "The Constitution and the Sharing of Foreign Policy Responsibility", in Edmund S. Muskie, Kenneth Rush and Kenneth W. Thompson (Ed), The President, Congress and Foreign Policy, (New York, University Press of America, 1986), p.37.
6. 'Dickinson Draft' which would have provided for a 'Council of State' appointed by Congress.
7. Thomas E. Cronin, "On the Origins and Invention of the Presidency", Presidential Studies Quarterly, Vol.17, no.2, spring 1987.
8. Louis Fisher, President and Congress, (New York, Free Press, 1972), p.279.
9. Norman J. Ornstein, "The Constitution and the Sharing of Foreign Policy Responsibility", op. cit. p. 37.
10. David M. Pletcher, "What the Founding Fathers Intended: Congressional - Executive Relations in the Early American Republic", in Michael Barnhart (Ed), Congress and United States Foreign Policy. Controlling the Use of Force in the Nuclear Age. (New York, State University of New York Press, 1987), p.129.
11. Shay's Rebellion was an uprising of 1786 of hard - pressed rural debtors in western Massachusetts. Before they were finally routed by the loyal militia under General Lincoln early in 1787, they rose in arms to launch an assault on the arsenal at Springfield. However, Shay's Rebellion taught a much needed lesson: it was not sufficient to place the state militia under some central control. The central government must be empowered to maintain an efficient army and navy to protect the states against internal disorders as well as external threat.
12. Thomas E. Cronin, "On the Origins and Invention of the Presidency", op.cit. p.232.
13. Federalist 10. Max Beloff (Ed), The Federalist or the New Constitution, (Oxford, Basil Blackwell, 1948), p41. The Federalist is the name given to a series of essays written and originally published in serial form in the New York Press between October, 1787 and August, 1788, with a view to influencing votes in favour of the proposed new Constitution of the United States which had just emerged from the deliberations of the Federal

Convention. The single signature is that of Publis, which stood for the three authors, Hamilton and Jay of New York, and Madison of Virginia.

14. Max Farrand, (Ed), The Records of the Federal Convention of 1787, (New Haven, Yale University Press, 1911), p.35.

15. For details, see Richard M.Pious, The American Presidency, (New York, Basic Books, 1979), pp.22 - 24

16. Thomas E. Cronin, "On the Origins and Inventation of the Presidency", op.cit. p. 232.

17. Ibid. p.230.

18. Edward S. Corwin, The President: Office and Powers, (New York, New York University Press, 1957), p.171. The parts of the government are divided and thus cooperation is uncertain.

19. Norman J Ornstein, "The Constitution and the Sharing of Foreign Policy Responsibility", op.cit. p.35.

20. Ibid. p.36.

21. Ibid. p.37.

22. The key work of Montesquieu being, Espirit Des Lois. See, The Spirit of Laws: with d'Alembert's analysis of the work translated from the French by Thomas Nugent, (London, Bell, 1878)

See also Louis Fisher, President and Congress, op.cit. pp.248 - 251.

23. Thomas E. Cronin, "On the Origins and Invention of the Presidency", op.cit. p.229.

24. The Virginia delegates took advantage of the delay in forming a quorum to meet together for two to three hours every day, and they agreed upon a series of resolutions to presented for the consideration of their fellow delegates. On May, 29th, as soon as their draft was completed, Governor Randolph, on behalf of the Virginia delegation, presented this outline to the Convention. These resolutions are important because, amended and expanded they were developed until they finally became the Constitution of the United States.

25. Most of the early discussion centred on the composition of the legislature. On this issue, a major cleavage between the large and small states arose. One faction, the nationalistic, large state bloc - comprising the delegations of Massachusetts, Pennsylvania and Virginia wanted direct popular election for both houses; representation in both houses apportioned according to population. On the other hand, the small state group, comprising New York and New Jersey, for example, and intent on preserving state rights, wanted state representation and state control of national government. The 'Great Compromise' which resulted, stipulated that in the lower house, each state be allowed one member for every 40,000 inhabitants, that all bills for raising or appropriating money originate in the lower house and not be amended by the upper, and that each state have an equal vote in the upper house.

26. Max Farrand (Ed), The Records of the Federal Convention of 1787, op.cit. Vol.1 p.65.

27. Ibid. p.66.
28. Ibid. p.97.
29. Ibid. Vol.2, p.52.
30. Ibid. Vol.1, p.65.
31. Ibid. p.54.
32. Ibid. Vol.2, p.542.
33. Ibid. Vol.1, p.65.
34. Ibid. Vol.2, p.31.
35. The Committee of Eleven comprised: Langdon, King, Johnson, Livingston, Clymer, Dickinson, Luther Martin, Madison, Williamson, Pinckney and Baldwin.
36. Max Beloff (Ed), The Federalist or, the New Constitution, op.cit. p.343.
37. Max Farrand (Ed), The Records of the Federal Convention, op.cit. Vol.1. p.119.
38. See, Richard M.Pious, The American Presidency, (New York, Basic Books, 1979), Chapter 1, 'The Creation of the Presidency', pp.18 - 46; Louis Fisher, President and Congress, op.cit. pp.17 -27; C.Herman Pritchett, 'The President's Constitutional Position', in Thomas E. Cronin and Rexford G.Tugwell (Ed), The Presidency Reappraised, (New York, Praeger, 1977), pp.4 - 8.
39. For historical and philosophical background on the separation doctrine, see, Louis Fisher, President and Congress, op.cit. pp.241 - 261.
40. Edward S. Corwin, The President: Office and Powers, 1787 - 1984, op.cit. p.354.
41. Hypothesis I included, Hamilton, Randolph, Sherman and Mason.
42. Arthur Schlesinger Jnr, The Imperial Presidency, op.cit. p. 81.
43. Max Beloff (Ed), The Federalist or, the New Constitution, op.cit. p.353
44. Abraham Sofaer, quoted in Norman J. Ornstein, "The Constitution and the Sharing of Foreign Policy Responsibility", op.cit. p.42
45. Ibid. p.43
46. Hypothesis II included, Butler, Wilson, Madison and Mercer.
47. George Szamuely, "The Imperial Congress", Commentary, Vol. 84. Part 3, P.27.
48. John Adams, quoted in Louis Fisher, President and Congress, op.cit. p.20.
49. Wilson, quoted in Ibid. p.21
50. Idem.

51. Max Beloff (Ed), The Federalist or, the New Constitution, op.cit. p. 265.
52. Jefferson.
53. Max Beloff (Ed), The Federalist or, the New Constitution, op.cit. p.349.
54. Constitution of the United States of America, Article II, Section I
55. George Szamuely, 'The Imperial Congress', op.cit. p.28.
56. For fuller elaboration on the two - thirds requirement, see Ernest Griffith, The American System of Government, (London, Methuen, 1983), Chapter 3
57. Although Hypothesis I argues otherwise
58. George Szamuely, "The Imperial Congress" op.cit. p.28.
59. Louis Koenig, quoted in Norman J.Ornstein, "The Constitution and the Sharing of Foreign Policy Responsibility", op.cit. p.42.
60. Max Beloff (Ed), The Federalist or, the New Constitution, op.cit. p.111.
61. Quoted in George Szamuely, 'The Imperial Congress', op.cit. p.28.
62. Max Beloff (Ed), The Federalist or, the New Constitution, op.cit. p.358.
63. Quoted in Arthur M. Schlesinger Jnr, The Imperial Presidency, op.cit. p.82.
64. Gilbert Kahn, "In Perpetual Tension: Executive - Legislative Relations and the Case of the Legislative Veto", Presidential Studies Quarterly, no.11, 1981, p.271.
65. Richard E. Neustadt, Presidential Power. The Politics Of Leadership, (New York, John Wiley and Sons Inc.,1960), p.33.
66. Arthur M. Schlesinger Jnr, The Imperial Presidency, op.cit. p.35.
67. The 'real' concern about the Vietnam War was not that the President usurped Constitutional power, but that acting within his powers, he virtually compelled the Congress to go along - signifying the failure of the separation doctrine.
68. Quoted in Louis Fisher, President and Congress, op.cit. p.23.
69. Louis Henkin, Foreign Affairs and the Constitution, (New York, Foundation Press, 1972), p.90.
70. Ibid. p.275.
71. Arthur M. Schlesinger Jnr, The Imperial Congress, op.cit. p.82.
72. Louis Koenig quoted in Norman J. Ornstein, "The Constitution and the Sharing of Foreign Policy Responsibility", op.cit. p.49. For further details of Constitutional conflicts, see, Louis Fisher, Constitutional Conflicts Between Congress and the President, (Princeton, New Jersey, Princeton University Press, 1985)

73. The bulk of Madison's analysis of the separation doctrine appears in Federalist 47. Also see, Hamilton and Van Dusen, 'Making the Separation of Powers Work', and Louis Henkin, Foreign Affairs and the Constitution, op.cit. Chapter IV, 'Separation of Powers: Conflict and Cooperation', pp.89-122.

74. Louis Henkin, "Foreign Affairs and the Constitution", Foreign Affairs, Vol.66, no.2, p.287.

75. Louis Henkin, Foreign Affairs and the Constitution, op.cit p. 278. For full synopsis, see Henkin, Foreign Affairs and the Constitution, op.cit. and Henkin, "Foreign Affairs and the Constitution", op.cit.

76. Charles Evans Hughes, quoted in Thomas E. Cronin, "A Resurgent Congress and the Imperial Presidency", Political Science Quarterly, Vol.95, no.2, 1980 - '81,

77. Arthur M. Schlesinger Jnr, The Imperial Presidency, op.cit. p.14

78. Washington, by receiving Citizen Genet, recognised the revolutionary government of France.

79. Richard M. Pious, The American Presidency, op.cit. p.72

80. Youngstown Sheet & Tube Co. V. Sawyer, 343 U.S. 579 (1952). For details, see, Arthur M. Schlesinger Jnr, p.144 - 6.

81. Louis Henkin, Foreign Affairs and the Constitution, op.cit. p.271.

82. Max Farrand, The Framing of the Constitution of the United States, (New Haven, Yale University Press, 1913), p.201.

Chapter 2: The Rise of the Modern Presidency and Theory of Presidential Power.

From the President to "the Presidency"; the "Imperial Presidency" to the Postmodern President.

"The Presidency is not merely an administrative office. That is the least of it. It is more than an engineering job, efficient or inefficient".¹

The Constitution as has been demonstrated did not firmly settle the issue of how power was to be exercised by the President or the Congress. It provided questions rather than answers. It could be argued that the Founding Fathers left the office of the President extraordinarily loose in definition partly because they trusted Washington to invent tradition as he went along.

The office of the President is an institution made a piece at a time by successive men in the White House. For example, Jefferson reached out to Congress to put together the beginnings of political parties, and Lincoln vastly expanded the administrative reach of the office.² Crucially, however, the nine post - Hoover Presidents have been different from their predecessors in a number of respects.

Firstly, it has come to be taken for granted that the President should regularly initiate and seek to win support for legislative action as part of his continuing responsibilities. The President has also become far more active in evaluating legislative enactments with a view to deciding whether to exercise the veto, than traditionally was the case. Secondly, from a President that exercised few unilateral powers, there has been a shift to one that is provided by the way of statutes, court decisions and informal precedents with many more occasions for direct policy-making, for example, through executive orders. Thirdly, from a Presidency with extremely modest staff support, there has evolved a Presidential bureaucracy. The President

has at his disposal a staff of thousands.³ Finally, there appear to have been major changes in the quality and quantity of public attention to incumbent Presidents.

Five reasons underlie the rise of Presidential government in the Twentieth Century: (1) the proliferation of international commitments and crises; crises maximise Presidential power, (2) the positive economic state; the demands of an industrial society made the President the chief administrator of the means to keep the country moving, (3) the 'paradox of Congressional expansion' (Rossiter). Congress seemed unable to expand its own power without at the same time expanding the power of the executive,⁴ (4) the "institutionalisation" of the Presidency. Two world wars vastly expanded federal payrolls and new administrative and personnel authority fell to the President, (5) Strong Presidents became the leaders of Congress. After the turn of the Century, the President was expected to have an extensive legislative programme and to work actively for its passage.⁵ Greenstein writes, "For many Americans the complex, uncertain political world of our times seems to be dealt with by personification, in the form of perceptions of the quality of performance and personal virtue of the incumbent President".⁶

The Rise of the Modern Presidency

Roosevelt:(Democrat, 1933-'45). The Emergence of the Modern Presidency.

The initial stage in the transformation of the Presidency resulted from the almost overnight rise in expectations about the appropriate duties of the Chief Executive. Cronin contends, "it was F.D.R. who beyond all Twentieth Century Presidents put the stamp both of personality and crisis on the Presidency".⁷ In the management of the Depression, Roosevelt claimed powers which in the past had only been exercised on the justification of war.

During the Second World War, "he endowed the precedents of both the Civil War and the First World War with unprecedented scope".⁸ During Roosevelt's term of office, the widely accepted need for economic intervention at home and the need for military intervention abroad swept away all opposition to the escalating growth in power and prestige of the Presidency.⁹ Polsby writes, "All Presidents receive vigorous criticism; for only a fortunate few does praise pour forth in comparable volume and intensity. Franklin Roosevelt is certainly one of the elect group".¹⁰

Also, in 1936, the Supreme Court forcefully upheld executive authority in foreign relations: Justice Sutherland, in the *U.S. Vs. Curtiss - Wright Export Corp et al* (299 U.S. 304), argued that the powers of 'internal sovereignty' lay with individual states, but those of 'external sovereignty' lay with national government.

The premodern historical record,¹¹ especially in the Nineteenth Century was one of numerous occasions of Congressional aversion to mere suggestions by the President that certain legislation be enacted. Roosevelt quickly established the practice of advocating, backing and engaging in the politics of winning for legislation. Thus, by the end of Roosevelt's long tenure of office, presidential legislative was assumed if not wholly approved.

This activism began within days of Roosevelt taking office. The "Hundred Days"¹² legislation designed to alleviate the Depression was perceived to be a result of his leadership. In one instance, concerning the Federal Deposit Insurance Corporation, Roosevelt was praised for the passage of a programme which he personally opposed but for which he gave his backing once he realised it had too much Congressional support to be defeated. "That Roosevelt was given credit for the initiatives of others points to the fact that during his administration people tended more and more to think of the President as a symbol for government." Greenstein continues, "the public dealt with the increasing complexity of government by personifying it".¹³

Roosevelt also established the precedent of accustoming the nation to expect the President to be aided by an array of policy advisers and implementers.¹⁴ Initially, these officials were officially on the payrolls of diverse non - White House agencies. Unofficially, they were "the President's men". Unfortunately, the high profile of these aides,¹⁵ while to Roosevelt's benefit, also upstaged him to a certain extent and, therefore, threatened his centrality as the symbol for national leadership. However, the sheer volume of work threatened to swamp the President.¹⁶ This dilemma led to Roosevelt's interest in procedures that would provide the Presidency with aides who were official but not highly visible.

In 1937 the Brownlow Committee, the Committee on the Administration of the Federal Government, appointed by Roosevelt in 1937, proposed such a staff. The Committee argued that, because of the mushrooming responsibilities of the Executive branch, the President needed extra help. It proposed that an Executive Office of the President (E.O.P.) be established intended to serve as the President's own advisory staff. The E.O.P. would also include a White House Office (W.H.O.) staffed by skilled and anonymous aides. As Hodgson points out, the Brownlow Committee's recommendations led directly to the first clear step in the direction of the modern and institutionalized Presidency.¹⁷ The Reorganisation Act of 1939 put the recommendations into action.¹⁸

The Bureau of the Budget (B.O.B.) was established in 1921. Until the passage of the 1939 Reorganisation Act the Bureau was lodged in the Treasury, although it was officially an office of the Presidency and restricted to mere bookkeeping. It did not attend to Presidential policy goals aside from the general 1920s policy of holding down budgetary requests and expenditures. Post Reorganisation Act the Bureau received a new director, Harold D. Smith, who was very much anonymous but committed to creating an organisation of highly able public administrators who would have a continuing responsibility to the President. The 1939 Act moved the B.O.B.

from the Treasury Department building to directly opposite the White House. Smith was thus in an ideal position to consult regularly with the President.

When Truman took office in 1945, it was still uncertain how the Presidential office would develop. Greenstein argues, "Roosevelt evidently was able to wed his own great powers of personal communication to the general sense of national urgency, channelling what had hitherto been a static patriotic sentiment - American veneration of the great Presidents of the past - into a dynamic component of the incumbent President's role".¹⁹ It was not inevitable that the "modern Presidency" would continue into subsequent administrations.²⁰

Truman: (Democrat, 1945-'52), Institutionalization of the Modern Presidency.

Under Truman, there was a shift from the personally stimulated policy initiatives of Roosevelt to the more methodical development of policy in consort with the W.H.O. and the B.O.B. Much of Truman's impact on the Presidency can be illustrated by comparing his and Roosevelt's styles of handling the B.O.B.: Roosevelt treated Smith very informally, like an unofficial adviser rather than the head of a statutory Presidential staff agency. However, under Truman the Bureau itself and its director became an integral part of the Presidency. Soon the B.O.B. took on the role of a central coordinating institution, responsible for framing and formalizing the annual presentations of what became known as the "programme of the President". Truman was responsible for the expanded role of the B.O.B., the increased size of the W.H.O. and the conversion of that staff into a team meeting daily with the President.²¹

It was during Truman's first two terms of office that the Bureau began as standard operating procedure, to examine all departmental appropriations

requests in relation to the President's overall programme. The Bureau gradually became involved in the legislative process. It became the norm for the B.O.B. to clear and coordinate all legislative requests originating within federal departments, to help draft legislation originating from the White House and to clear and draft Executive Orders.²²

The Council of Economic Advisers (C.E.A.), which was provided for in the Employment Act of 1946, was a further addition to the President's power. The Council became part of the President's team and the Report of the President's Council of Economic Advisers is now one of the three major Presidential communications sent to Congress in January each year.²³

The National Security Council (N.S.C.) emanated from the National Security Act of 1947 which also brought about the unification of the armed forces. One of its specific tasks was to oversee the preparation of memoranda that define and evaluate options for policy decisions. The memoranda cover the entire gamut of foreign policy; one of the most famous documents produced being N.S.C.-68. The 1947 Act also created the Central Intelligence Agency (C.I.A.), which although intended to be independent of the military and separate from any other executive agency, itself evolved into an agency with programmes and policy preferences.

In the expanded domain of independent Presidential action, Truman was responsible for initiating and implementing policy-making. Examples include his decision to use atomic weapons at the end of World War II and the decision to send American troops to Korea. "Despite domestic policy stasis, his low general popularity, and the political costliness of some of his decisions", contends Greenstein, "Truman's practice of executive assertiveness entrenched the tendency of all but the most conservative policy-makers to look to the President as the main framer of the agenda for public debate".²⁴

Eisenhower: (Republican, 1952-'59) Confirmation of the Modern Presidency

A recent reassessment of the Eisenhower Presidency ²⁵ has shown that Eisenhower was far from being the mere puppet of Adams and Dulles²⁶ and was intimately involved in national security policy-making. However, Eisenhower was a domestic political conservative without a great desire to innovate and he does seem to have delegated authority to Adams, for example, as a framer of alternatives under circumstances where Truman would have canvassed alternatives of his own.

Hodgson states, "The very fact that President Eisenhower was relatively inactive seems to have fostered the development of the institutional Presidency".²⁷ Things still had to get done which if they were not going to be done at the express orders of the President, were going to have to be done by someone else. In 1956, the White House staff had increased to four hundred. By the end of Eisenhower's second term, the E.O.P., including the B.O.B., the C.E.A. and other functions had a payroll of almost three thousand.²⁸ "At first their (White House assistants) role was to help the President: to read, to evaluate and digest material for him; to help him draft speeches, messages and other texts; to meet with the people he could not see and in general share the physical burden of the office". However, as Hodgson continues, "Gradually they became not just an extension of the President's person, but an extension of his power"²⁹ With time the White House staff would usurp the Cabinet.

Further institutionalising the White House under Eisenhower, each Presidential assistant had fixed responsibilities. Only Adams reported directly to the President, everyone else was subordinate to Adams in a very clear White House chain of command. Cabinet meetings grew in size and a Cabinet Secretariat was established to follow up on decisions reached in the Cabinet meetings and to keep the agenda. The main feature, however, of the

Eisenhower system of staff organisation was the channelling of all lines of communication to the President through Adams.³⁰

To conclude, then, the rise of the Presidency was due to: (1) the social acceptance that government should be active and reformist rather than simply protective of the status quo, (2) the breakdown in the principle of dual federalism in the field of Congress' legislative powers, (3) the breakdown of the principle of the separation of powers as defining the relationship between the President and the Congress in law - making, (4) the breakdown of the principle that the Congress may not delegate its powers, and (5) the impact on the President's power as Commander-in-Chief and the organ of foreign relations in the wake of two world wars and the emergence of the United States from isolationism.³¹

The modern Presidency was created by Roosevelt. However, the theory of the Presidency is more recent. It was created by Eisenhower albeit unintentionally. "The strong Presidency", argued Rossiter during Eisenhower's term, "is the product of events that cannot be undone and of forces that continue to roll. We have made our decision for the New Economy and the New Internationalism, and in making them we have made this kind of Presidency a prerogative for the effective conduct of our Constitutional system".³²

There was little theoretical discussion of the Presidency before Eisenhower.³³ A rash of biographies of the strong Presidents of history, such as Carl Sandburg's Lincoln³⁴ did portray the President as the saviour of the nation. However, it was not until the mid 1950s when two strong activist Democratic Presidents had been succeeded by a Republican, who was arguably strong but certainly not activist, that literature about the Presidency proliferated.³⁵ Two separate questions about Presidential power emerged: firstly how much does the President have; and secondly, how much should he have?

Hypothesis I

The "1960 School"³⁶

The 1960 school favoured a strong Presidency and judged Congress by its ability and willingness to enact the President's programme. Within this perspective, the President represented a national constituency, whose will was largely embodied in his programme. For Congress to fail to enact this programme by giving into parochial, sectional or special interest groups was seen as anti-democratic.³⁷ As Walter Johnson argued, "one of the few political truths about the American system of government is that the President alone can give the nation an effective lead".³⁸ As regards the legislature, "at best Congress was a loyal helpmate...at worst, it was an aggressive backseat driver..."³⁹ Marcus Cunliffe would conclude, "...Historically, the legislative branch has sought to weaken executive authority through jealous obstructionism. The executive branch is the hero of the story of American Federal government. Congress the villain".⁴⁰ The 1960 School allowed for no other national, political or governmental leadership than the President's.

The new theory was founded on new assumptions concerning the political system and its environment. Firstly, it was maintained that the institutions of American government could no longer represent or serve an increasingly complex and differentiated society, and that only the Presidency could expand to serve the new groups and claims. Secondly, the world was viewed to be in a state of permanent threat, justifying a perpetually strong Presidency. The world was cloaked in the darkness of the Cold War. It was the West's moral obligation to defeat the evil of Communism. An international climate of extreme tension and hostility evolved between the two adversarial blocs. The threat of nuclear war became a genuine

possibility. Arnold and Roos write, "Now all the Presidents were to be Lincolns, or more precisely, Franklin Roosevelts".⁴¹

Makers of the Theory

The 1960 consensus was based on the assumption that the Presidency derives its great virtue from its lofty height.⁴² Truman used to say that the President was the "only lobbyist the whole people had in Washington". As such, it rose high above the petty, particularist concerns of Congressmen. Herman Finer summed up the sentiment well when he described the Presidency as "the incarnation of the American people in a sacrament resembling that in which the wafer and the wine are seen as the body and blood of Christ".⁴³

For the 1960 school, the great virtue of the Presidency entailed great responsibility. In 1956, Rossiter described the burden of the Presidency as "colossal"⁴⁴; by 1960, it was "monstrous"⁴⁵. Corwin wrote of the office as a "killing job"⁴⁶; and Koenig, a "horrendous challenge"⁴⁷. Indeed, the burden of the Presidency was perceived as so enormous that only by defining each specific role and function could one appreciate his noble task. The idea of the President as wearer of many "hats", the ubiquitous man in the American political system, was a favourite among the 1960 School. Rossiter went so far as to award the President eleven hats: Chief of State, Chief Executive, Commander-in-Chief, Chief Diplomat, Chief Legislator, Chief of Party, "voice of the people", protector of the peace, manager of the prosperity, world leader and "President of the West".⁴⁸

The 1960 School saw not only great virtue and responsibility in the Presidency, but also great power. Corwin described the history of the Presidency as the "history of aggrandizement".⁴⁹ Tugwell concurred, noting the "vast accumulation"⁵⁰ of Presidential power. However, whilst the School argued that although the President's was indeed great, it was not enough. Koenig perceived a "chasm" between the amount of power the Presidency needs

and is believed to have and what it really has.⁵¹ Finer argued that the effective power of the office was inadequate because of the responsibilities it had to meet.⁵² Thus, much of the writing of the 1960 School searched for ways to reduce the gaps. For example, Finer proposed the creation of eleven elective Vice-Presidents to share executive power, in a manner similar to the British Cabinet.⁵³

Rossiter: The American Presidency

"The President is not a Gulliver immobilized by ten thousand tiny chords, nor even a Prometheus chained to a rock of frustration. He is rather a kind of magnificent lion, who can roam widely and do great deeds".⁵⁴

Clinton Rossiter set out in The American Presidency to examine the character of the office. His conclusion was simple, namely that a terrifyingly complex world necessitated one man rule and forced one to rely more and more on that one man. He states, "we must cease wasting our energies in discussing whether the government of the United States is going to be powerful, or we are going to be obliterated".⁵⁵

Rossiter's work represents a step forward from the Rooseveltian image of the Presidency to a model of what the office ought to be. As Rossiter attempted to shape a theory of the office, he was compelled to examine the distribution of power in the national political system. Arguing for a strong Presidency, he clearly envisaged the relationship between the President and Congress as a balance scale; an increase in the power of the President would necessarily be accompanied by a decrease in the power of Congress. In other words, it was a zero-sum game.

The American Presidency represents the threshold of the full modern view of the Presidency. However, in it, Rossiter dismisses the possibility of enhancing the President's power through systematic reform. Rather he argues

that the President must learn to live within a "coordinate" political system and he simply directs Congress on the necessity of following the President.

The full blown modern view of the Presidency elaborates on Rossiter's work by leaving aside the separation of powers doctrine and focusing not on the structural and institutional characteristics of the office, but on the dynamic process of leadership. The explicit interest is the maximization of leadership possibilities. Neustadt's Presidential Power⁵⁶ and Burn's Deadlock of Democracy⁵⁷ are the two most significant works reosententing this modern view of the Presidency.

The Neustadt Model: Presidential Power: the power to persuade.

"The separateness of institutions and the sharing of authority prescribes the terms on which a President persuades. When one man shares authority with another, but does not gain or lose his job upon the other's whim, his willingness to act upon the urging of others turns on whether he conceives the action right for him. The essence of a President's persuasive task is to convince such men that what the White House wants of them is what they ought to do for their sake and on their authority".⁵⁸

In Presidential Power, Neustadt set out to examine the Presidency as a problem in decision theory. The model probes the character of Presidential power and concludes, "Presidential power is the power to persuade".⁵⁹ The Neustadt model is concerned with the likelihood that the President would fail to be politically effective because of the restraints imposed on him by other elements in the political system, the advantages of others in that system and because of his own failure to exercise skilled leadership. Neustadt writes, "in form all Presidents are leaders but this guarantees no more than they will be clerks".⁶⁰ Certainly, the President has great and

diverse resources but he has power only insofar as he can employ them in negotiations and bargaining. Neustadt dramatized his point: in the run-up to the 1952 Presidential election, President Truman would ponder over the problems of the General - become - President should Eisenhower win the forthcoming election. "He'll sit here and he'll say, 'Do this! Do that!' And nothing will happen. Poor Ike it won't be a bit like the Army".⁶¹

Governmental power is influence of an effective kind on the behaviour of men actually involved in formulating and implementing foreign policy. The Neustadtian model is built on the assumption that successful influence for the President stems from:

- a) bargaining advantages inherent in the office with which to persuade other men that what he wants of them is what their own responsibilities require them to do;
- b) the expectations of those other men concerning his ability and will to use the various advantages they perceive him as having;
- (c) those men's estimates of how the public views him and of how their own publics may view them if they do as the President wants.⁶² Neustadt states, "in short, his power is the product of his vantage points in government, together with his reputation in the Washington community and his prestige outside".⁶³

By conserving his influence and understanding his position, the President can overcome the limitations imposed by his environment. Therefore, the task is to overcome the barriers imposed by the separation of powers. To the degree that the President can persuade he can overcome the frustrations inherent in the separation of powers.

Presidential choices either enhance or dissipate a President's power. Neustadt argues that, "a President is so uniquely situated and his policy so bound up with the uniqueness of his place, that he can count on no one else to be perceptive for him".⁶⁴ Neustadt's hypothesis attempts to instruct the President on how to work within these limitations in order to have the

greatest opportunity for overcoming them. The model suggests a decision theory to help the President in his quest to impose his will on others: The President must inquire of each potential decision: 'What will this do for my power.' Each action bears on his present and future power to persuade and the President who is most able to maximise his power will be most effective at leadership. Thus, Neustadt concludes that a President's capacity to lead results from his adeptness at persuasion.⁶⁵

A Critique.

As Peter Sperlich points out, although Neustadt's model has a persuasive ring, this in part testifies to an ultimate weakness for Neustadt fails to consider other alternatives.⁶⁶ There is a tendency in Presidential Power to depict the President as a lonely fighter against all others. Those with whom the President must deal are seen as his natural adversaries. Sperlich posits, "is it so inconceivable that some persons may genuinely want to help a President?"⁶⁷ Not everyone in the President's environment can be a bargainer and not everyone wants to be.

Neustadt's model also assumes that no one can see things as the President does because no one can stand exactly in his place. However, what is unique is only interpretation and not the constituent elements. Presidential Power fails to appreciate that a President who would always bargain and who would alone carry out all the tasks associated with successful bargaining, would soon be buried by overload.

"Command" and "persuasion" are the only two ways in which a President can influence the action of others which the model considers. However, are command and persuasion the full range of influence alternatives? Is command as counterproductive as the model describes and is bargaining as propitious?

The model fails to take into account routine Presidential requests which are acted upon without bargaining and without command, thus tending to over-emphasize the dramatic nature of Presidential Power.

Not all potential recipients of Presidential influence are equal or independent. This implies that the need for bargaining strategies varies directly with the importance of the issue and the independence of the influence recipient. Sperlich contends, "if a President were to follow Neustadt's prescription at all times, there would be very little difference in his approach to his Director of the Bureau of Budget about a minor item and his approach to an opposition Senator in respect to a major new policy".⁶⁸ Neustadt makes no reference to deprivation or instrumental rewards, and must a President always bargain? Often one is left pondering whether power-maximization is an end in itself.⁶⁹

Burns in Deadlock of Democracy represents the next logical step in the development of the modern Presidency theory. Burns stands back from the view of leadership dynamics, which prevails in the Neustadtian model, to concentrate on a conception of the Presidency within the structure of national government. However, both Neustadt and Burns extol the notion of expanded Presidential power. Burns states, "the Presidential leader must...be a constructive innovator who can re-shape to some degree the constellation of political forces in which he operates".⁷⁰

Deadlock of Democracy focuses on the institutional and party foundations of American national politics and asks whether they support or hinder the President. As Arnold and Roos point out, "his analysis cuts to the heart of the separation of powers which works to negate executive power and independence".⁷¹ The Burns analysis lies at the level of political parties: Each of the major national parties has a Presidential and Congressional side, which in turn reflects a Madisonian or Jeffersonian tradition. Arnold and Roos state Burns' argument thus: "the separation of powers has created a schizoid political system. The Presidency and Congress each rests on

different constituencies, manifests different interests and involves different political processes. One checks rather than supports the other".⁷²

The system of checks and balances makes dynamic leadership impossible, the President being the only possible source of that leadership. Burns contends, "the task of governing is harder in the United States, for the leader...must bring together the right combination of Presidential party and Congressional party".⁷³ He maintains that the only way to overcome the problem is through majority support for Presidential leaders. Otherwise, he states, "we can choose bold and creative leaders without giving them the means to make their leadership effective. Hence we diminish a democracy's most essential and priceless commodity - the leadership of men who are willing to move ahead to meet emerging problems".⁷⁴

"In summary, then", writes Andrews, "the 1960 writers glorified the Presidency...That institution incarnated governmental virtue. If only it could be made virtually omnipotent through institutional reforms and by electing men with enough will power and skill, the Presidency could solve as many problems as humanly possible".⁷⁵

As Hodgson points out, while the liberal programme appeared to be working at home and guaranteeing national security and honour abroad, there was little inclination to challenge the powers of the President.⁷⁶ However, he continues, "for the first time, and as a direct result of the Vietnam War, the idea began to spread that if the Presidency was not as strong as it needed to be in order to do what liberals wanted to do at home, it might be altogether too free to roam like a mighty lion and do great deeds abroad".⁷⁷ Aaron Wildavsky first drew a distinction between the foreign and domestic Presidencies in an article, "The Two Presidencies" which appeared in 1966.

Wildavsky: "The Two Presidencies" Thesis.

"The United States has one President, but it has two presidencies: one Presidency is for domestic affairs and the other is concerned with defence and foreign policy. Since World War II, Presidents have had much greater success in controlling the nation's defence and foreign policies than in dominating its domestic policies".⁷⁸

In 1966 Wildavsky argued that the President exerted greater control over foreign and defence policy than domestic. His evidence for this "two Presidencies" thesis was that Congress passes substantially more Presidential proposals in the realm of foreign and defence policy than in domestic. To substantiate his thesis, Wildavsky compiled from the Congressional Quarterly Service tabulation of Presidential initiatives and Congressional responses, 1948 - 1964.⁷⁹ He stated, "when refugees and immigration - which Congress considers primarily a domestic concern - are removed from the general foreign policy area, it is clear that Presidents prevail about seventy per cent of the time in defence and foreign policy, compared with forty per cent in the domestic sphere".⁸⁰

The "Two Presidencies" argued that foreign and domestic policy are shaped in distinct political arenas, marked by different political configurations: (1) due to the international responsibilities assumed by the United States in the aftermath of World War Two, foreign policy has come to dominate the President's agenda. The pace of international events is rapid, decisions are irreversible, and success or failure is quickly clear, (2) foreign policy is largely outside the field of partisan conflict; unlike domestic policy, the President does not inherit a detailed party programme in foreign policy, (3) the President's competitors are weak in foreign policy - Congress is fragmented and the public uninformed. For Wildavsky the key to Presidential power in foreign policy did not lie in the Constitutional

foundations, but in changes that had taken place in the international system since 1945. The growth in the number of Third World nations, the existence of nuclear weapons, the threat of the holocaust and the Cold War were all cited by Wildavsky as reasons why foreign policy tended to drive out domestic concerns.

There are two reasons as to why the idea of "two Presidencies" gained prominence during the late 1960s: (1) the Cold War's emphasis on the continuing spread of Communism which tended to exaggerate crisis decision-making and national security issues, (2) the methodical weakness of the case studies.⁸¹

A Critique.

Only Eisenhower was clearly more successful in foreign policy than modern Twentieth Century Presidents. From Nixon's Vietnam policies and Ford's attempts to intervene in Angola, to Reagan's difficulties gaining support for the Contras and S.D.I., it is clear that Presidential control of foreign policy is not as complete as Wildavsky once argued.

Those who largely agree with the "two Presidencies" thesis include, Cohen, Fleisher and Bond, Rourke and Leloup and Shull;⁸² those who generally disagree include, Carter, Edwards, Peppers and Sigelman.⁸³ However, regardless of this debate, there are several undisputed facts: (a) the general level of Congressional support for the President has declined, (b) the relationship between the two branches is constantly in flux, and (c) in the past, analysis has tended to over or under estimate Congress' impact on the foreign policy processes.

Wildavsky's thirty point margin of difference occurred during a time span covering the most frigid periods of the Cold War, when Congress displayed great deference to Presidents acting as Commander-in-Chief and Chief Diplomat. In contrast, during the period, 1965 - 1975, Leloup and Shull's

analysis of Presidential boxscores found that Congress adopted forty-six per cent of the Presidents' domestic requests and fifty-five of their foreign and defence proposals.⁸⁴ This nine point margin is at sharp variance with Wildavsky's thirty points, although it does point in the same direction.

Siegelman contends, "the major problem with Presidential boxscores is that so many of the Congressional roll calls on which they are based relate to non-controversial and inconsequential issues. As a result, the measures are an indiscriminate mixture of a few apples - major pieces of legislation - amidst a myriad of oranges - relatively trivial concerns".⁸⁵ Also, Presidential proposals go through many modifications prior to final Congressional approval or rejection. As such, Sigelman decided to use a more restrictive measure of Presidential success. He looked at votes on which the President had taken a position rather than at Presidential initiatives. Analysis was limited to key votes as determined by the Congressional Quarterly. However, key votes are also problematic because they are small in number and, therefore, shifts on a few close votes can lead to large shifts in the percentage of votes won.⁸⁶

Writing in 1975, almost a decade after Wildavsky's original thesis, Donald Peppers points out that there is a tendency in "The Two Presidencies" to confuse a President's jurisdictional control over governmental decisions with actual power. In the first place a President cannot physically carry out policy: Peppers uses, as an example, Kennedy's decision to withdraw the Jupiter missiles from Turkey. Kennedy could not dismantle them and take them back to America himself, thus ensuring the full execution of his policy. Decision-making may be the President's prerogative but only the organisation under him can implement his decisions. The President is reliant upon others for information and implementation. Heads of departments and other bureaucratic players will emphasize options which will further the interests of their own organisations.⁸⁷ Wildavsky also overlooks the fact that public opinion, Congress, the military establishment and the State Department all

influence a President to do what he otherwise would not have done. Peppers contends, "if the public held Johnson accountable, it was the bureaucracy under him that led him to believe each escalating step to be the turning point of the war".⁸⁸

However, perhaps the most notable change according to Peppers in the years since the publication of "The Two Presidencies" has been a blurring in distinction between foreign and domestic affairs. Today foreign policy is increasingly non-military and heavily economic in emphasis.⁸⁹

It is more than two decades since Wildavsky's thesis dramatised Presidential control of foreign policy. What remains? Firstly, partisan and ideological divisions do not effect all areas of foreign policy equally, secondly, because foreign policy is more like domestic policy, this does not prevent Presidential success. Today, however, success is more dependent on popular appeal. Thirdly, much of the President's powers is beyond the reach of Congress - for example, the Commander-in-Chief power. ⁹⁰

However, the idea of two Presidencies was picked up. It was a natural progression from the notion that the President had more power in foreign policy to the idea that he had too much.

"Doubts"

In a 1969 book, Arthur M. Schlesinger Jnr, acknowledged doubts growing for some time ...regarding...the thesis of the strong Presidency"⁹¹; Hans Morgenthau, who in the past had urged Presidents to assert their Constitutional powers against Congress, impelled the Senate to restore its own vanquished power.⁹²

Hypothesis II

Simultaneous and in conjunction with the prevalence of strong Presidency literature, and perhaps in political reaction, came the rise of a minority anti-Presidency view, the "literary theory" school. Scholars such as Willmoore Kendall, Ernest Griffith and James Burnham⁹³ perceived Congressional parity or even dominance as a prerequisite to the revival of sound political order. Nelson Polsby argued that a Congress was not a rubber-stamp for the President. Thus, the perspective emphasized that Congress was designed by the Founding Fathers as part of a scheme of checks and balances. Therefore, if Congress checks the President by refusing to enact one of his bills it is simply performing as intended.

However, what is important about both hypotheses is that while coming to different conclusions about the balance of power between the President and Congress, they both share one fundamental assumption: one must necessarily choose between a strong Congress and a strong President.

The Time of Revision

"Power revealed is power reduced; power concealed is power enhanced".⁹⁴ Huntington contends, "in general, if it becomes widely accepted that the Presidency lacks extensive power and that its occupant is readily checked by other officials and groups, this fact in itself is evidence of support for Presidential power. If, on the other hand, people believe that the President is not so powerful or that his power is declining when Presidential power is really great, public opinion never considers it to be great; when Presidential power is fading, public opinion considers it inordinate". This is the power paradox.⁹⁵

The Vietnam War heralded the end of an American era. Responsibility for defeat was placed squarely at the feet of the President. Four successive Presidents had plunged America into the mire of South East Asia. But more

importantly, with Nixon's arrival in office in 1968, the liberals who had extolled expansive Presidential power, now had to contend with a Republican in the White House. The Liberals had wanted a strong Presidency because they assumed that a strong President would always be on their side. As Eisenhower handed over his office to Kennedy, there were few who would have believed it possible that within a decade, a conservative would have become the strongest President of all⁹⁶. Hodgson writes, "the rift between intellectuals and the White House, firm allies since the days of the New Deal" had emerged. "...The ground was thoroughly prepared for the orgy of handwriting and lamentation that greeted the White House revelations...Now the reversal was complete. The advocates of Presidential power became the scourges of the 'Imperial Presidency'".⁹⁷

A precursor of Schlesinger's study, The Imperial Presidency⁹⁸, was George Reedy's Twilight of the Presidency.⁹⁹ In 1970, Reedy, Johnson's former press secretary, warned that the White House was becoming a court. "The Presidency", he maintained, "had taken on all the regalia of monarchy except ermine robes, a scepter and a crown".¹⁰⁰ Reedy depicted the Presidency as isolated from reality, convinced of his own goodness and "protected" by "a human wall of sycophants who served as his staff".¹⁰¹ He continued, "somehow we must learn to govern our people from an office that is secular and not from a court that is sanctified".¹⁰² In 1975, Califano, who served under Johnson stated, "the forces now at play in our society will press towards a dangerous concentration of Presidential power".¹⁰³

Schlesinger: The Imperial Presidency.

"The American political system, though misconceived by some as made up of three coordinate branches of equal powers, has worked best as a Presidential system. Only strong Presidents have been able to overcome the tendencies toward inertia inherent in a structure so cunningly composed of checks and balances". (1962)¹⁰⁴

"What the country needs today is a little serious disrespect for the office of the Presidency; a refusal to give any more weight to the President's words than the intelligence of the utterance, if spoken by anyone else, would command; an understanding of a point made so aptly by Montaigne: 'Sit he on never so high a throne, a man still sits on his bottom". (1973)¹⁰⁵

The Imperial Presidency is largely a history of the President's war-making powers. Schlesinger's main concern is with the apparent shift in the constitutional balance between Congress and the President. He contends that Presidential power had become so expanded and abused, that it threatened the Constitutional system. He argues that the original constitutional understanding was for Congress to decide for war or peace (except in the event of surprise attack which the President on his own authority might repel), and that the Commander-in-Chief clause did not vest the President with independent constitutional authority to commence hostilities.

Writing in 1973, amidst the continuing unpopularity of the Vietnam War and the trauma of Watergate, Schlesinger's contention that Presidential power had attained a state of extreme aggrandizement seemed justified and very apt. However, Schlesinger argued that the Vietnam War and Watergate were not isolated instances of usurptions of Presidential power but merely the climax of rampant Presidential ascendance, prevailing since the Constitutional

Convention of 1787. As such, he explores two vital instruments that gave rise to the abuse of power by the President: war power and secrecy.

Schlesinger regards Presidential wars launched simply by the Chief Executives' fiat as the foundation of the Imperial Presidency, culminating in the Twentieth Century with the Korean and Vietnam conflicts. The increased use of Executive Agreements and expansive executive privilege further secured foreign policy as the principal arena of the Imperial Presidency. Presidential primacy, Schlesinger argued, had become Presidential supremacy. He stated, "the image of the President acting by himself in foreign affairs, imposing his own sense of reality and necessity on a waiting government and people, became the new orthodoxy".¹⁰⁶

The President consolidated his rise in foreign affairs with such programmes as the New Deal and the Great Society in the domestic sphere. The expansion of the national economy, dominated by interstate and international business and liable to control through national regulation resulted in a Presidency which appropriated the power of Congress in both foreign and domestic affairs. Thus, Schlesinger concluded, "by the early 1970s, the American President had become on issues of war and peace the most absolute monarch...among the great powers of the world".¹⁰⁷

A Critique

Pious states, "it is in Schlesinger's treatment of Franklin D. Roosevelt, Harry S. Truman, and John F. Kennedy that certain quasi-constitutional standards are smuggled into the argument".¹⁰⁸ Roosevelt's orders to the armed forces prior to the attack on Pearl Harbour placed the United States in a state of hostilities with the Axis. Congress was not invited to declare a naval war in the Atlantic. However, Schlesinger defends Roosevelt by citing his extensive consultations with the executive branch and Congressional leaders of both parties. Schlesinger writes, "even a symbolic

concern for Congress expressed a lurking sensitivity to constitutional issues".¹⁰⁹

Schlesinger abandons this lurking "sensitivity test" in his analysis of Truman's decision to intervene in Korea. Truman relied solely on his power as Commander-in-Chief to order troops into hostilities and did not ask for a declaration of war or even a Congressional resolution of support. However, Schlesinger is swift to point out the constitutional difficulties which Truman faced because the troops were deployed according to the June 25 resolution of the United Nations Security Council. He even defends Truman for having consulted fully and candidly with his executive colleagues only. In support of John F. Kennedy, Schlesinger maintains that even in the depths of acute national emergency, such as the Cuban Missile Crisis, Kennedy still managed to consult with members of the Executive Committee of the N.S.C. (Excom). However, was the missile crisis the grave situation which Schlesinger depicts? In Essence of Decision, Allison states that McNamara, Secretary of Defence, did not regard the placement of Soviet missiles in Cuba as a great military threat against America. Did not Kennedy rely most heavily on McNamara, Sorenson and his brother, Robert rather than the Excom, even going so far as to use Robert Kennedy to make arrangements with the Soviet leadership that were not disclosed to members of Congress or the Excom at the time.¹¹⁰

Schlesinger would appear to employ shifting criteria for the evaluation of the Johnson and Nixon Presidencies. For example, although Schlesinger concludes that several Presidents did transgress the constitutional understanding that Congress declare war, he lays the main responsibility for the creation of the imperial Presidency with Johnson and Nixon. According to Schlesinger, what distinguishes the imperial Presidents from their predecessors is not simply their isolation from reality and unwillingness to consult with Congress, but also their lack of awareness that they were acting beyond their authority. However, "what is the constitutional

distinction between Kennedy's attempt to coopt members of the Executive Committee, Johnson browbeating his Cabinet secretaries, or Nixon retreating to some hideaway and consulting solely with his secretaries of state and defence. The Constitution admits neither the Lockean prerogative nor Schlesinger's various versions of consultation: it calls for a Congressional declaration of war".¹¹¹

Koenig states, "even that spectacular Exhibit A of Schlesinger's imperial Presidents, Richard Nixon, who stretched to the farthestmost limits claims of executive privilege, impoundments of appropriations, and indulgence in sheer indictable acts, suffered many Congressional rebuffs".¹¹² Congress prevailed over Nixon by ending the secret war in Cambodia through cutting off funds, and many of his modest programme proposals were constantly refused by the legislature. Indeed, Schlesinger very much underestimates the obstructive role of Congress.

Schlesinger depicts Congress as largely compliant, supine and only occasionally assertive against the President. However, this is at variance with the prevailing view which perceives Congress as the potentially most powerful legislative body in history. In foreign affairs the role of Congress has been far greater than Schlesinger allows. From the post - Civil War years until the close of the Nineteenth Century Congress' influence on foreign affairs was stronger than the Presidents'. According to Schlesinger the assumption of war-making power by the Presidency was gradual and was more a matter of Congressional abdication than Presidential usurpation. However, the House pressed President Monroe, at the risk of war with Spain to recognise the new Latin American republics emerging from the crumbling Spanish Empire. In 1895, Congress successfully annexed Hawaii and later induced a peace-minded President McKinley to war with Spain over Cuba. Post World War I, Wilson's Versailles Treaty was defeated.

Barber: The Presidential Character.¹¹³

"What the Presidency is at any particular moment depends in important measures on who is President".¹¹⁴

Barber's work represents the first major development from the tactical approach to the study of the Presidency put forward by Neustadt in Presidential Power. In the American Republic, the President is the closest approximation to a monarch. Barber states, "that inevitably brings to bear on the President intense moral, sentimental and quasi-religious pressures which can, if he lets them, distort his own thinking and feeling".¹¹⁵ Barber contends that firstly, a President's personality is an important shaper of Presidential behaviour in nontrivial affairs. Secondly, he argues Presidential personality is structured. Thirdly, a President's personality interacts with the power situation he faces and the national 'climate of expectations' prevalent at the time. This interaction between the external environment and the President's personality act as a catalyst for the dynamism of the Presidency. Finally, the surest way to predict a President's character is to examine his early life and initial independent political success.

According to Barber Presidents may be classified according to their placement along two dimensions, firstly, "active" or "passive"; secondly, "positive" or "negative" depending on their feelings regarding the work of being President. Using these classifications, Barber develops a typology with four types: a) active-positive, b) active-negative, c) passive-positive, d) passive-negative. What it is vital to know about a President or aspirant is where he fits among these types. One must ask, how active the President is and whether or not he gives the impression that he enjoys his political life. The active-positive President wants most to achieve results. Active-negative Presidents aim to get and keep power. A passive-positive

President crave love, while the President who is passive-negative emphasizes civic virtue.¹¹⁶ Thus Barber contends that decision-making styles can be identified for certain types, and he is concerned particularly with the active-negative President dealing with a prolonged crisis. He contends that this President may "rigidify" in such a crisis, and that this rigidification can be observed when a President works to exhaustion, isolates himself from allies and subordinates, succumbs to self-pity and looks for scapegoats.¹¹⁷

Barber: A Critique

Pious points out¹¹⁸ that Barber's typology may simply be a reaction to the Nixon Administration. However, Pious concedes, "if the simple test that the validity of any hypothesis is its use in winning barroom bets, then Barber can win a pile".¹¹⁹ It is clear that placement of Presidents need not be, and was not in Nixon's case, post hoc. The best evidence to suggest the importance of Barber's work is its preparation and publication prior to Watergate: Barber placed Nixon in the active - negative category and predicted that he would rigidify in his second term. "The typology and theory about rigidification break important new ground...The simplicity of Barber's theory provides its elegance, and its researchability demonstrates its utility".¹²⁰ If Barber is correct, then failure can be intelligently managed only by certain personality types.

The Postmodern President

Rose argues that, "the defining characteristic of the postmodern President is simply stated: the resources of the White House are not sufficient to meet all the President's international responsibilities"¹²¹ A postmodern President cannot secure success simply by influencing Congress and public opinion; the President must also influence leaders of other nations and

events in the international environment. The global scope of America's political commitments makes the White House vulnerable to events in the international system. According to Rose, "while the traditional President did not participate in the international system and the modern President could dominate it, the postmodern President has no choice but to cooperate and compete, since economic and national security problems are not contained within national boundaries".¹²² The Carter Administration was bedeviled by inflation at home, the oil price rises, the seizure of American hostages in Iran and the Soviet Union's invasion of Afghanistan. Reagan successes were dependent on the response of other nations to White House initiatives, the I.N.F. agreement being the classic example. However, American arms could not secure White House aims in Nicaragua. The postmodern President is synonymous with bargaining, competition and interdependence.

The President today faces three imperatives. Firstly, in order to hold office the President needs popular support. Secondly, in order to direct the government he must influence the power holders in Washington. Thirdly, to maintain America's national security and economy, the President must influence the international system.¹²³ Each imperative is a response to a different political audience.

Although every President would like to take charge, this can only occur if two conditions are met: a) the relationship between the different political audiences is fully understood. It is vital that measures needed to satisfy one audience do not create too great dissatisfaction with another; b) the White House can actually influence events and institutions.¹²⁴ Any response that a President makes to a political imperative is likely to impose costs as well as benefits. However, because the President's major responsibilities are imperatives, he is forced to make choices in unfavourable as well as favourable circumstances. With this last point, we return to Neustadtian model, "choices are the means by which he [the President] dissipates his power".¹²⁵

Footnotes. Chapter 2.

1. Franklin D. Roosevelt, quoted in Thomas E. Cronin, The State of the Presidency, (Boston, Little Brown and Company, Second Edition, 1980), p.1.
2. For the history of the Presidency, see Clinton Rossiter, The American Presidency, (Ithica, New York, Harvest, 1960), Edward S. Corwin, The President: Office and Powers 1788 - 1861, (New York, New York University Press, 1964), Harold J. Laski, The American Presidency, (London, George Allen and Unwin Ltd, 1952), Marcus Cunliffe, American Presidents and the Presidency, (London, Eyre and Spottiswoode, 1969)
3. See footnote 28
4. For example, the Budget Act of 1921, created the Bureau of the Budget, which Congress put under the control of the Presidency; the aim of Congress was to create greater economy. The outcome was greater centralisation of executive control in the name of efficiency.
5. Five points from David M. Abshire, Foreign Policy Makers: President V's Congress, Washington Papers, (London, Sage. Publications, 1979), pp.32 -33.
6. Fred Greenstein, "Change and Continuity in the Modern Presidency", in Anthony King (Ed), The New American Political System, (Washington D.C., American Enterprise Institute, 1983), p.46. Details of the nine post - Hoover Presidents, Ibid. pp.46 - 60.
7. Thomas E. Cronin, The President: Office and Powers 1788 - 1861, (New York, New York University Press, 1964), p.358
8. Idem.
9. For details regarding the rise of the modern Presidency, see Clinton Rossiter, The American Presidency, op.cit. Chapter 4, Godfrey Hodgson, All Things To All Men. The False Promise of the American Presidency, (London, Weidenfeld and Nicolson, 1980), Chapter II
10. Nelson W. Polsby, Congress and the Presidency, (New Jersey, Prentice - Hall Inc. 1976, 3rd Ed.), p.10. The 1949 and 1962 Schlesinger surveys, "Our Presidents: A Rating by 75 Historians", New York Times Magazine, (July, 29, 1962), ranked Roosevelt third behind Lincoln and Washington as a "great" President.
11. Premodern being the previous "traditional" Presidents to Roosevelt.
12. Including such major policy departures as the Banking Act, the Securities Act and the Civilian Conservation Corps. For details regarding Roosevelt's first term, see, Frank Friedel, Franklin D. Roosevelt: Launching the New Deal, (Boston, Little Brown, 1973).
13. Fred Greenstein, "Change and Continuity in the Modern Presidency", op.cit. p.49. This can be seen by the amount of mail the President received: Roosevelt received as much in a day as Hoover did in one week. See, Merlin Gustafson, "The President's Mail", Presidential Studies Quarterly, Vol 8. Winter, 1978, p.36.
14. President Ulysses S. Grant, in his first term, was authorised by Congress to have \$13,800 per annum to pay the wages of one private

secretary, one stenographer, two executive clerks, one steward and one messenger. See Godfrey Hodgson, All Things To All Men. The False Promise of the American Presidency, op.cit. p.106.

15. The two leading young lawyers who were main agents during the "Second New Deal" appeared on the cover of TIME. Their names were Thomas Corcoran and Benjamin Cohen. See, Fred Greenstein, "Change and Continuity in the Modern Presidency", op.cit. p.50. and Patrick Anderson, The President's Men. Assistants of Franklin D. Roosevelt, Harry S.Truman, Dwight D.Eisenhower, John F. Kennedy, Lyndon Baines Johnson, (Garden City, Doubleday, 1968)

16 In 1937, Roosevelt had 37 aides; in 1938, 45. See Godfrey Hodgson, All Things To All Men. The False Promise of the American Presidency, op.cit. p.100.

17. Idem.

18. Two points are worth noting regarding the growth of the Presidency as a bureaucratic institution: (1) the very rapid nature, (2) the White House became a bureaucracy within the federal bureaucracy of the executive branch. See, Barry D. Karl, Executive Reorganization and Reform in the New Deal: The Genesis of Administrative Management, 1900 - 1939, (Cambridge, Mass. Harvard University Press, 1963).

19. Fred Greenstein, "Change and Continuity in the Modern Presidency" op.cit. p.49.

20. For details regarding the Roosevelt Presidency, see Frank Friedel, Franklin D. Roosevelt, 4 Vols, (Boston, Little Brown and Comp. 1952 - 1973), James M. Roosevelt Burns, The Lion and the Fox, (New York, Harcourt Brace, 1956)

21. The White House staff grew rapidly under Truman from 48 in 1944 to over 250 in 1952. It was during Truman's term that the staff first developed a second tier. Important aides, such as Clark Clifford, acquired assistants of their own. See Godfrey Hodgson, All Things To All Men. The False Promise of the American Presidency, op.cit. p.101.

22. Such tasks were in addition to the late 1930s function of review and clearance with other relevant agencies, of all Congressional enactments, with a view to recommend whether they be signed or not.

23. The other two being the State of the Union message and the budget document.

24. Fred Greenstein, "Change and Continuity in the Modern Presidency" op.cit. p.57. For details regarding the Truman Presidency, see Dean Acheson, Present at the Creation: My Years at the State Department, (New York, Norton, 1969), Harry S. Truman, Memoirs, 2 Vols, (Garden City, New York, Doubleday, 1955 - 1956)

25. Including newly opened private and confidential files of the President's personal secretary.

26. Sherman Adams was the Chief of Staff for the first six White House years and Dulles was the Secretary of State.

27. Godfrey Hodgson, All Things To All Men. The False Promise of the American Presidency, op.cit. p.102. Thus, when Kennedy took office, the

Presidency had its own personal skeleton bureaucracy which could be used to control all strategic points of government.

28. Components of the Executive Office of the President 1985.

<u>Component.</u>	<u>Staff Size.</u>
White House Office	322
Office of Management and Budget	594
National Security Council	61
Council of Economic Advisers	34
Office of U.S. Trade Representatives	41
Office of Science and Technology Policy	15
Council on Environmental Quality	11
Office of policy Development	45

Source: Thomas L. Brewer, American Foreign Policy. A Contemporary Introduction, (New Jersey, Prentice - Hall, 1986), p.153.

29. Godfrey Hodgson, All Things To All Men. The False Promise of the American Presidency, op.cit. p.103. Under Kennedy and Johnson, the White House staff developed from being the President's assistants to being his enforcers. Under Nixon, the staff itself began to manage, and the B.O.B. was transformed from an essentially career non partisan body into a new "Office of Management and Budget" intended solely to serve the President's interests. Nixon also established a Domestic Council as a counterpart to the N.S.C. See, Idem.

30. For greater detail of the Eisenhower Presidency, see Robert L. Branyan and Lawrence H. Larsen (Ed), The Eisenhower Administration, 1953 - 1961: A Documentary History, 2 Vols, (Westport, Conn. Greenwood Press, 1971)

31. Edward S. Corwin, The President: Office and Powers, 1787 - 1984, op.cit. pp.358 - 9. None of the periods of Presidential retrenchment in the 1850s and 1870s threatened the steady accumulation of power; the experience of Congressional government in the generation after the Civil War merely confirmed that only the President had the ability to lead in the Twentieth Century.

32. Quoted in Godfrey Hodgson, In Our Time. America from World War II to Nixon, (London, Macmillan, 1976), p.100.

33. Notable exceptions being, Harold J. Laski, The American Presidency. An Interpretation, op.cit., Edward S. Corwin, The President: Office and Powers, (New York, New York University Press, 1954) Finletter, Can Representative Government Do The Job? (New York, Reynal and Hitchcock, 1945)

34. Carl Sandburg, Lincoln. 2 Vols, (New York, Harcourt Brace, 1926) Also, Douglas Southhall Freeman's Washington and Arthur M. Schlesinger Jr's, The Age of Jackson.

35. Books that proliferated included, Sidney Hyman's, The American Presidency (Harper, 1954) and Rexford G. Tugwell's The Enlargement of the Presidency (Garden City, Doubleday, 1960)

36. Also referred to as the "Reform Literature Period" or the "Textbook Presidency". The 1960 School so called because around 1960 political scientists published an abundance of thought on the Presidency.

37. Louis W. Koenig, The Presidency Today, (New York, New York University Press, 1956), The Chief Executive, (New York, Harcourt Brace, 1964), Herman Finer, The Presidency: Crisis and Regeneration, (Chicago, University of Chicago Press, 1960)
38. Walter Johnson, 1600 Pennsylvania Avenue, (Boston, Little Brown, 1960) p.330.
39. William G. Andrews, "The Presidency, Congress and Constitutional Theory", in Aaron Wildavsky (Ed), Perspectives on the Presidency, (Boston, Little Brown and Company, 1975), p.26.
40. Quoted in Godfrey Hodgson, All Things To All Men. The False Promise of the American Presidency, op.cit. p.104.
41. Peri E. Arnold and L. John Roos, "Toward A Theory of Congressional - Executive Relations", Review of Politics, Vol. XXXVI, no. 36, 1974, p.412.
42. It is interesting to note that several members of the 1960 consensus had in common the experience of service in the executive branch of national government during the Roosevelt and Truman Administrations, but not under any Republican President. For example, Corwin was an adviser to Roosevelt's Public Works Administration in 1935; Neustadt served for eight years in the Office of Price Administration, B.O.B. and as a Special Assistant to the President under Roosevelt and Truman
43. Quoted in William G. Andrews, "The Presidency, Congress and Constitutional Theory", op.cit. p.25.
44. Clinton Rossiter, The American Presidency, 1956 Ed, op.cit. p.26.
45. Ibid. 1960 Ed. p.42.
46. Edward S. Corwin, The President: Office and Powers, 1954, 4th Ed. p.38.
47. Louis W. Koenig, The Chief Executive, (New York, Harcourt and Brace, 1964), p6.
48. Clinton Rossiter, The American Presidency, op.cit. Chapter 1. Corwin, Koenig and Binkley compiled similar lists.
49. Edward S. Corwin, The President: Office and Powers, 1957 Ed. op.cit p.294.
50. Rexford G. Tugwell, The Enlargement of the Presidency, op.cit. p.22. Tugwell would later "change sides". His 1960 biography, Grover Cleveland, (New York, Macmillan, 1960), extolled a strong Presidency; ten years later, he would write, "the President has too much power; and he has not enough" Taken from, "The Historian and the Presidency: An Essay Review", Political Science Quarterly, June, 1971, pp.184 - 204. A similar change of opinion can be seen in Koenig's work.
51. Louis W. Koenig, The Chief Executive, op.cit. p.3. Chapter 1.
52. See, Herman Finer, The Presidency: Crisis and Regeneration, (Chicago, University of Chicago Press, 1960)
53. An idea supported by Tugwell.
54. Clinton Rossiter, The American Presidency, 1956 Ed. op.cit. p.73.

55. Ibid p.72.

56. Richard E. Neustadt, Presidential Power. The Politics of Leadership, (New York, John Wiley and Sons Inc, 1960)

57. James Macgregor Burns, Deadlock Of Democracy, (Englewood Cliffs, New Jersey, Prentice Hall, 1963)

58. Richard E. Neustadt, Presidential Power. The Politics of Leadership, op.cit. p.34.

59. Ibid. p.10.

60. Ibid. p.6.

61. Ibid. p.9.

62. Ibid. p.179.

63. Idem.

64. Idem.

65. Idem.

66. Peter W. Sperlich, "Bargaining and Overload: An Essay on Presidential Power", in Aaron Wildavsky (Ed), Perspectives on the Presidency, op.cit., Chapter 17, p424.

67. Idem.

68. Ibid. p.423.

69. Theodore H. White's, The Making of the President, (London, Jonathon Cape, 1960) drew heavily on the academic literature of the period, especially Neustadt. It was a celebration of the Presidency, and partly because of the success of White's book, the high theory of Presidential prerogative later came to be associated in the public mind with Kennedy. This is wrong; it first came to fashion under Eisenhower, and reflected the Presidencies of both Truman and Roosevelt. See also, Douglas J. Hoekstra, "Presidential Power and Presidential Purpose", Review of Politics, Vol.XLVII 1985, pp.556 - 588.

70. James Macgregor Burns, Deadlock of Democracy, op.cit. p.338.

71. Peri E. Arnold and L. John Roos, "Toward a Theory of Congressional - Executive Relations", op.cit. p.415.

72. Idem.

73. James Macgregor Burns, Deadlock of Democracy, op.cit. p. 260.

74. Ibid. p. 325.

75. William G. Andrews, "The President, Congress and Constitutional Theory", op.cit. p. 27.

76. Godfrey Hodgson, All Things To All Men. The False Promise of the American Presidency, op.cit. p. 73.

77. Idem.

78. Aaron Wildavsky, "The Two Presidencies", in Aaron Wildavsky (Ed), Perspectives on the Presidency, op.cit. p.448.

79. Congressional Action on Presidential Proposals from 1948-1964.

<u>Policy Area</u>	<u>Cong.% Pass.</u>	<u>Cong.% fail.</u>	<u>No.of Props.</u>
Domestic policy	40.2	59.8	2499
Defence policy	73.3	26.7	90
Foreign policy	58.5	41.5	655
Immigration, refugees	13.2	86.0	129
Treaties, general foreign relations	70.8	29.2	445

Taken from Ibid. p.449.

80. Idem.

81. See, John T. Rourke and Ralph G. Carter, "Dualing Presidencies: Assessing the Relative Roles of Congress and the Presidency in American Foreign Policy Making", Paper presented at the Joint Annual Meeting of the British International Studies Association, London, March 30th 1989, pp.14 - 15.

82. J. E. Cohen, "A Historical Reassessment of Wildavsky's 'Two Presidencies' Thesis", Social Science Quarterly, Vol.63, no.2, September, 1982, R. Fleisher and J.R. Bond, "Are There Two Predsidencies? Yes, But Only For Republicans", Journal Of Politics, Vol.50, no.2, 1988, L.T. Leloup and S.A. Shull, "Congress Versus the Executive: The 'Two Presidencies' Reconsidered", Social Science Quarterly, no.59, 1979.,

83. R.G. Carter, "Congressional Foreign Policy Behaviour: Persistent Patterns of the Postwar Period", Presidential Studies Quarterly, Vol.16, no.2, 1986, G.C. Edwards III, "The Two Presidencies: A Reevaluation", American Politics Quarterly, no.14, Part 3, 1986, Donald A. Peppers, "Two Presidencies: Eight Years Later", in Aaron Wildavsky (Ed), Perspectives on the Presidency, op.cit., L.Sigelman, "A Reassessment Of the Two Presidencies Thesis", Journal Of Politics, no.41, Part 2, 1979.

84. Lance T. Leloup and Steven A. Shull, "Congress Versus The Executive: 'The Two Presidencies' Reconsidered", op.cit. p.709.

85. L. Sigelman, "A Reassessment of the Two Presidencies Thesis", op.cit. p.1198.

86. Harvey G. Zeidenstein built upon Sigelman's example, separating the results of each chamber of Congress. See, "The Two Presidencies Thesis is Alive and Well and Has Been Living in the U.S. Senate Since 1973", Presidential Studies Quarterly, Vol.XV, No.4. Fall 1981, pp.511 - 525.

Fleisher and Bond tried to overcome the problems of the key votes: See, "Are There Two Presidencies? Yes. But Only For Republicans", op.cit. pp.747 -

767. This aspect was developed be Edwards, "The Two Presidencies: A Reevaluation", op.cit. pp.247 - 263.

87. Model II, Graham T. Allison, Essence of Decision. Explaining the Cuban Missile Crisis, (Boston, Little, Brown and Company, 1971), Donald A Peppers, "Two Presidencies: Eight Years Later", in Aaron Wildavsky, Perspectives on the Presidency, op.cit. p464.
88. Ibid. p.467.
89. Especially in this period of Perestroika and Glasnost, and friendly American - Soviet relations
90. Daune Oldfield and Aaron Wildavsky, "The Two Presidencies Thesis in an Age of Political Dissensus", Paper presented at Joint Annual Meeting of British International Studies Association, London, March 30th, 1989, p.16
91. Arthur M.Schlesinger Jnr, The Crisis of Confidence, Ideas, Power, and Violence in America, (Boston, Houghton Mifflin, 1969), p.313.
92. Hans T. Morgenthau, "Congress and Foreign Policy", New Republic, June, 14, 1969, p.17.
93. Also, L. Fisher, Lewis Froman, Barbara Hinckley and Randall Ripley.
94. Samuel Huntington, American Politics. The Promise of Disharmony, (Cambridge, Mass., Belknap Press of Harvard University Press, 1981), p.79.
95. Idem.
96. Godfrey Hodgson, All Thing To All Men. The False Promise of the American Presidency, op.cit. p.104.
97. Ibid. p.76.
98. Arthur M. Schlesinger Jnr, The Imperial Presidency, (Boston, Houghton Mifflin Comp. 1973)
99. George E.Reedy, The Twilight of the Presidency, (New York, World publishing Company, 1970)
100. Ibid. p.9.
101. Louis W. Keonig, "Reassessing the 'Imperial Presidency', Proceedings of the Academy of Political Science, Vol. 34, no.2, 1981 - 1982, p.34.
102. George E. Reedy, The Twilight of the Presidency, op.cit. Last sentence.
103. Joseph A. Califano, A Presidential Nation, (New York, W.W.Norton and Company, Inc. 1975), p.326.
104. Arthur M.Schlesinger Jnr, The Politics of Hope, (Boston, Houghton Mifflin, 1962), p.9.
105. Arthur M.Schlesinger Jnr, The Imperial Presidency, op.cit. p.411.
106. Ibid. p.206.
107. Idem.
108. Richard M.Pious, "Is Presidential Power Poison?", Political Science Quarterly, Vol.89, no.1, 1974, p.633.

109. Arthur M. Schlesinger, The Imperial Presidency, op.cit. p.113.
110. Graham T. Allison, Essence of Decision. Explaining The Cuban Missile Crisis, op.cit, Chapter II.
111. Richard M. Pious, "Is Presidential Power Poison?", op.cit. p.634.
112. Louis W. Koenig, "Reassessing The 'Imperial Presidency'", op.cit. p.35.
113. James D. Barber, The Presidential Character, (Englewood Cliffs, New Jersey, Prentice Hall, 1977)
114. Edward S. Corwin, The President: Office and Powers, op.cit.p.30.
115. James D. Barber, The Presidential Character, op.cit. p.5.
116. Ibid. p.13.
117. Quoted in Richard M. Pious, "Is Presidential Power Poison?", op.cit. p.630.
118. Ibid. p.631.
119. Idem.
120. Idem.
121. Richard Rose, The Postmodern President. The White House Meets the World, (Chatam, New Jersey, Chatam House Publishers Inc., 1988), p.25.
122. Ibid. p.28.
123. Ibid. p.31.
124. Ibid. p.44.
125. Richard E. Neustadt, Presidential Power. The Politics of Leadership, op.cit. p.179.

Chapter 3: The Fall and Rise and Fall of Congress.

"You guys...All you guys in the media. All of politics has changed because of you..."¹

In the wake of the Vietnam War and the perceived abuses of power by the Johnson and Nixon Presidencies, culminating in Watergate, Congress passed a series of foreign policy legislation, that restricted the President's range of options in foreign policy issues. Although perhaps well intended, the legislation has proved to be unconstitutional, ill - conceived and detrimental to the overall success to American foreign policy.

Vietnam: The Presidency on the Rampage.

During the Kennedy Administration intervention in Vietnam was limited and raised no great constitutional questions. The dispatch of "advisers"² took place under the usual arrangements for military assistance based upon Congressional legislation and appropriation. However, when for example, American helicopters lifted South Vietnamese troops to the field of battle, this was clearly beyond express Congressional instruction. But there were few American deaths³ and Congress concurred with Executive policy. Thus, American involvement in actual fighting drew little attention. The remainder of American commitment in this period was covert and thus, followed the Eisenhower precedent with tacit but explicit Congressional consent, and immune to legislative scrutiny.⁴

"Lyndon Johnson", Schlesinger states, "came to the Presidency with an old and honest belief in spacious Presidential authority to deploy force abroad in the service of American foreign policy".⁵ The conflict in Vietnam was extended to the North in 1964. In July of that year, an American destroyer, operating with South Vietnamese sea and land forces against North Vietnam

was supposedly hit by torpedo boats in the Bay of Tonkin. President Johnson used this episode, "tendentiously explained",⁶ to obtain from Congress the authority to employ forces in open naval combat. According to the "Pentagon Papers", which Daniel Ellsberg, a Defence Department analyst leaked to the press in June 1971, Johnson had had a resolution ready and waiting for such a provocation months before,⁷ which once Congress signed it, would give him extended powers to deal with the Vietnam crisis.⁸ Thus began the first bombing attacks of North Vietnam.

Schlesinger contends, "The Tonkin Gulf Resolution⁹...rushed through Congress in August 1964 in a stampede of misinformation and misconception, if not of deliberate deception."¹⁰ The resolution passed the House unanimously; in the Senate, only Morse (Rep. Mass) and Gruening (Dem. Alaska) dissented. As Macridis points out at the time it was assumed that passage of this resolution would strengthen the President's bargaining position by giving the impression of a united nation behind him. However, as the Pentagon Papers revealed, the United States had actually been waging a low-level covert war against North Vietnam for four years and, therefore, "North Vietnam's action in the Tonkin Gulf was either retaliatory or precautionary".¹¹

The role of Congress under Johnson regarding war-making power was not to sanction but to support the war. Hodgson argues, "the constitutional role of Congress had thus been reduced to a purely consultative role, to be exercised only when the President decided it would be appropriate for Congress to be consulted: or in effect, virtually to zero".¹²

The Dominican Republic.

The fact that Presidential consultation with Congress was an illusion is well demonstrated by the American troop incursion of the Dominican Republic. In the spring of 1965, Johnson ordered 22,000 American troops to the island

without seeking Congressional authorisation. The reason he gave was the protection of American lives.¹³ However, the number of troops was far in excess of the amount required. It was armed intervention for political purposes; Johnson was determined to stand up to Communist infiltration.¹⁴ The idea that a situation in any corner of the world might so threaten the United States that the President could go to war on his own, greatly expanded doctrine of defensive war. However, "if Johnson construed the high prerogative more in the Eighteenth-Century style of the British monarch than of the Republican executive envisaged by the Constitution, his successor carried the inflation of Presidential authority even further. For President Nixon stripped away the fig leaves which his predecessor had draped over his assertion of unilateral Presidential power".¹⁵

Nixon.

Contending that his power as Commander-in-Chief¹⁶ authorised him to use American ground troops to invade Cambodia, and to do so without reference to or even the knowledge of Congress, President Nixon extended Presidential war-making to excess. Nixon's predecessors, who had strengthened the executive power in the past, had done so in the face of visible and dire threat to the national survival: Lincoln was confronted by Civil War; Roosevelt, the Third Reich. Each, moreover, had done what he felt he had to do without claiming constitutional sanction. However, in justifying the commitment of American troops to remote and neutral Cambodia, Nixon cited no emergency that denied time for Congressional debate, expressed no doubt about the legality of his own initiative and showed no desire for retroactive Congressional ratification.¹⁷ The commitment of American troops to Cambodia was no more, he implied, than the routine employment of Presidential power, it required no special Congressional assent.²¹ Schlesinger writes, "the government thus committed armed forces to

hostilities first in Cambodia then in Laos¹⁸ and North Vietnam...on the basis of a theory of defensive war so elastic that a President could freely, and on his own initiative, order armed intervention in any country housing any troops that might in any conceivable circumstance be used in an attack on American troops".¹⁹

The Effect of Vietnam on American Foreign Policy.

Vietnam had several direct effects on America's attitudes and especially on broader conceptions of America's role in the world. Spanier and Nogee note, for example, that prior to Vietnam, the effective conduct of American foreign policy was equated with a strong Presidency,²⁰ but that the war produced a wide-spread disillusionment with the "Imperial Presidency" which was perceived to be characterised by needless involvement where vital interests were not at stake, many and expensive foreign commitments, a failure to define areas of utmost and lesser importance and a general disposition to military and covert action.²¹ Growing internal unrest about America's role in Vietnam led many people to question the basic premises of American foreign policy. The "credibility gap" brought a growing distrust of the Presidency and political institutions in general, and increased cynicism regarding American politics. Television relayed the stark images of war into the nation's living rooms.

These changes in public attitudes were paralleled by changes in elite attitudes, especially inside Congress. From 1955 on the Democratic Party had maintained consistent control over both houses of Congress. Vietnam provided a major new policy wedge that divided the majority Democrats, exacerbating the existing friction, for example, over civil rights.²²

Simultaneous with Vietnam, Secretary of State Kissinger's diplomacy, which both employed and depended upon secrecy, revived the old suspicion of "European-style" secret diplomacy. Covert intervention against the Allende government was the most disturbing example of this apparent trend.

Chile.

In October 1973 President Salvador Allende was overthrown in a military coup. Rumours spread that the C.I.A. had helped overthrow this elected Socialist leader.²³ Under oath American officials, including Kissinger, assured Congress that the allegations were false. However, in April 1974, C.I.A. Director William Colby admitted to a closed session of the international intelligence subcommittee of the House Armed Services Committee, the agency's extensive covert programme to overthrow Allende. In fact, of the thirty-three C.I.A. covert projects in Chile during the period, 1963 - 1973 only eight had been reported to the appropriate Congressional committees.²⁴

Watergate.

Debate at the time concerning the abuse of Presidential power must be considered in the context of Watergate. Hodgson notes, "as what Nixon's friend and Attorney General John Mitchell called "the White House horrors" began to unfold in 1973, it became clear that the high view Nixon and his circle took of Presidential prerogative was only exceeded by the low view they took both of the spirit and the letter of the Constitution. The convenient use of the word, 'Watergate' as shorthand for the Administration's transgressions can obscure the gravity of what Nixon did. It tends to suggest that he was driven to resign because a team of burglars working for the committee to re-elect him was found inside the Democratic National Committee's offices. That was, in the end, the least of it".²⁵ For example, after criminal investigation, Vice-President Agnew was forced to resign his office in 1973.²⁶

Nixon's Administration was based on a huge lie. Hodgson writes "the fundamental falsehood of the Administration's stance on Vietnam...made necessary the deception of Congress and the American people about the bombing of Vietnam and Cambodia. With the passage of time, deception became not so much a tactic to be used as need as a strategy and a habit..."²⁷ That one major lie led to numerous "smaller" deceptions.

The strategy of deception abroad filtered back into the Administration's practice at home. It was to prevent leaks about its foreign policy that the "plumbers' unit" was initiated. Had not Watergate intervened, the "Huston Plan" would have led to the establishment of an American secret police force. "In short", Hodgson maintains, "Nixon from time to time claimed powers and immunities for his office that, if successfully asserted, would have had the effect of radically upsetting the constitutional system of checks and balances and of replacing the constitutional President with a new style of Chief Executive whose virtually absolute power was justified by the supposed requirements of 'national security', and qualified only by the need to win a 'mandate' from the voters every four years".²⁸

The Resurgence of Congress

"We want a strong and intelligent President, but he has to bear in mind - we got elected too".²⁹

"Congress already has enormous power, if it only had the guts to use it".³⁰

"The Constitution assigns to the President, not to Congress, the duty to 'take care that the Laws be faithfully executed...' Yet throughout the history of the Union, Congress has devised one way or another to look over the President's shoulder to see whether the execution of the laws is being carried out faithfully"³¹.

When the 93rd Congress convened in January 1973 many members were in angry mood. The Speaker of the Democratic controlled House of Representatives, Carl Albert of Oklahoma warned, the Congress must check and reverse the 'accelerating' usurption of power by the Executive branch...these wholesale executive invasion of legislative powers and responsibilities.³² In the Senate, the Democratic Majority Leader, Mike Mansfield of Montana called for a 'reinforcement of Constitution's system of checks and balances'.³³

Four issues divided the President and Congress: a) impoundment of appropriated funds: Nixon had impounded at least \$8.7 billion that Congress had appropriated thereby unilaterally appealing laws that Congress, with the President's approval, had enacted. Through impoundment, Albert argued, Nixon had acquired an item veto³⁴; b) conduct in the war in Vietnam: while Congress was in recess, Nixon without consultation Congressional leaders had intensified bombing of North Vietnam and ordered the mining of the port of Haiphong; c) executive privilege: under the doctrine of executive privilege, the President asserted unlimited power to withhold any information from Congress, solely at his own discretion; d) government reorganisation: Nixon put into effect the basic features of a plan for reorganising the executive departments that Congress had specifically rejected.³⁵

Among certain members a mood of anxiety regarding the expansion of Presidential power at the expense of Congress dominated Capitol Hill. As Sundquist notes this mood of anxiety reflected the pervasive feeling that the problem lay far deeper than Nixon and his aggressive usurpation of power. While Congress condemned the President, it also looked inward and asked many probing questions of itself. Why had the legislative branch allowed itself to sink to such a low estate? Did it have the will and capacity to regain its place? A period of introspection ensued. Members observed that Congress had been declining for a long time; indeed, that

legislatures world-wide had been declining in favour of the executive. Few regarded the imbalance as something new that began with Nixon.

Congress realised that it stood low in public esteem. From a positive rating of sixty-four per cent in a Harris poll in 1965, it had slipped to thirty-eight per cent in 1973.³⁶ Out of anger, anxiety and public pressure and contempt emerged a new assertiveness. In March 1973, a bipartisan group of thirty-five Senators and Representatives took the floor to demand that the Congress find a way to impose its own effective ceiling on the budget. In April seventeen freshman Democrats kept the House in session to make the same pleas. Thus, Sundquist writes, "the Congress achieved in the early weeks of 1973, something close to a collective resolve - a firmness and unity of purpose extraordinarily difficult to attain in a body as diffuse as the Congress - to restore the balance between the executive and the legislative branches that, in its view, had prevailed".³⁷ But how could Congress re-establish itself and what would be the consequences; what was the right balance between the President and Congress?³⁸

A Decade of Congressional Revival.

As Hodgson notes, "if the Tonkin Gulf was the high water mark, it was also the turning point. Within a couple of years, resentment of the way Congress had been hoodwinked by Lyndon Johnson, reinforced by real, slowly growing concern over both the fortunes and the justification of the Vietnam War, began a process by which Congress gradually asserted a new claim to be consulted in foreign policy, or more accurately in constitutional terms, reasserted its long eroded prerogatives".³⁹

The Campaign to End the War Itself.

Between 1966 and 1972, Congress in one house or the other, voted ninety-four times in recorded votes on issues related to the war⁴⁰, and at least another four hundred and fifty-five times in unrecorded votes.⁴¹ The largest

number of members ever to vote against the war in the House before 1973 was little more than one third: one hundred and seventy-seven on the 10th of August 1972. While the series of votes reflected growing disenchantment with the war inside and outside Congress, very few Congressmen took this to the length of actually voting against appropriations of money to carry on the war. From 1965 - 1972 on all appropriations bills related to the war, more than ninety-five per cent of all members of the House present voted in favour of the bills in aggregate. It was not until May 1973, two months after the United States finally pulled its last troops out of South Vietnam that the House voted to cut off all funds for combat in Southeast Asia. Nevertheless, even if Congressmen were reluctant to lay themselves open to the charge of failing to support American fighting men in the field, Congress did slowly and surely reassert itself in opposition to a perceived Presidential war.⁴²

The National Commitments hearings began just as the Nixon Administration had taken over the re-negotiation of the Spanish Bases Agreement, which had been signed originally as an executive agreement in 1953.⁴³ In 1969, General Earle Wheeler, chairman of the Joint Chiefs of Staff, assured the Spanish that the guarantee of American troops in the Spanish bases was better than having a treaty. When such statements were leaked to the press, the newly-established Symington sub-committee argued that non-constitutionally approved commitments could lead to war.⁴⁴ The Senate Foreign Relations Committee⁴⁵ maintained that rather than executive agreements minimizing the commitment, it created one which, without proper oversight, could escalate into armed conflict. The National Commitments Resolution⁴⁶ attempted to define what the Senate considered to be genuine national commitments, in contrast to Presidential agreements which it considered did not commit the nation. Abshire argues that, although the resolution did not have the force of law, it made very clear the sense of the Senate that a "national

commitment" could not exist by Presidential action alone, but required Congressional authorisation also.⁴⁷

The campaign proper to end the war began with a provision in the Defence Appropriations Act of 1970 which stipulated that, "none of the funds appropriated by this Act shall be used to finance the introduction of ground troops in Laos and Thailand".⁴⁸ The Cambodian incursion inflamed Congress and the public, however. The Cooper-Church Amendment to the supplemental Foreign Authorisation Act of 1971 stated: "none of the funds authorised or appropriated pursuant to this or any other Act may be used to finance the introduction of United States ground combat troops into Cambodia, or to provide United States advisers to or for Cambodian military forces in Cambodia".⁴⁹

An historic process had begun to take place. Firstly, the legislative debate and public attention on Capitol Hill obviously affected the President's freedom of action. Secondly, a precedent was established whereby Congress had effectively exercised the power of the purse and the ability to restrict military operations and security assistance. Once this precedent had been established, momentum mounted for similar efforts in other areas.

In the past the authorisation and appropriation process had been used to rubber-stamp the President's requests or to cut those requests for reasons of economy. Now a new methodology was developed whereby the President's actions could be restricted through amendment to the authorising or appropriating bills.⁵⁰ As a result of the success of the modified Cooper-Church Amendment,⁵¹ the anti-war forces in the Senate moved with increased determination to impose a cut-off date on the President. The Mansfield Amendment to the Defence Procurement Authorisation Act of 1971⁵² read: it must be "the policy of the United States to terminate at the earliest practicable date all military operations of the United States in Indochina, and to provide for the prompt and orderly withdrawal of all United States military forces".⁵³ In 1973 the Eagleton Amendment to the supplemental

Appropriations bill⁵⁴ stated: "notwithstanding any other provision of law, on or after August 15, 1973, no funds herein or heretofore appropriated may be obligated or expended to finance directly or indirectly combat activities by the United States military forces in and over or from the shores of North Vietnam, South Vietnam, Laos or Cambodia".

In an attempt to prevent future Vietnam's, in 1973 Congress passed the War Powers Resolution⁵⁵ over President Nixon's veto. The resolution stipulated that before American troops are introduced "into hostilities or situations where imminent involvement in hostilities is clearly indicated by the circumstances", the President was to consult with Congress "in every possible instance". The President was to notify Congress and submit a report within forty-eight hours after armed forces are sent abroad, "setting forth the circumstances necessitating the introduction of United States forces" and the "estimated scope and duration of the hostilities or involvement". After an initial two-day period, the President had sixty days to withdraw those forces or receive a Congressional authorisation for an extension, or a congressional declaration of war.⁵⁶

Congressional assertiveness also extended to cover wider foreign policy issues. The Case Act of 1972⁵⁷ reflected a long-standing desire to control the use of executive agreements with other nations.⁵⁸ The Act requires the Secretary of State to submit to Congress within sixty days the text of any international agreement made by the executive branch. Congressmen had long since objected to the extensive use of executive agreements, which were used rather than treaties to conclude international agreements precisely because they circumvented the need for Senate advice and consent. They argued that the President had used executive agreements to deny the Senate its constitutional right to ratify or reject treaties and thus they kept Congress and the public in the dark as to their content.

Commercial sales and military assistance grants amounted to \$10.6 billion in 1975, with recipients in 71 countries.⁵⁹ In the wake of the Vietnam War,

Congress concluded that arms sales were but one route into the mire of foreign war. When the United States sold high technology defence equipment to a country, it usually contracted to install and maintain it, and to train locals how to use it etc. Thus, the United States became indirectly involved with that nation's security. The Nelson - Bingham Amendments,⁶⁰ beginning with the 1974 Foreign Assistance Act, required the President to give advance notice to Congress of any offer to sell to foreign states defence articles and services valued at \$25 million or more and empowered Congress to disapprove such sales within twenty calendar days by concurrent resolution.⁶¹

In 1974 the Hughes - Ryan Amendment to the Foreign Assistance Act provided, "that no funds appropriated in this or any other Act may be expended by or on the behalf of the Central Intelligence Agency for operations in foreign countries other than activities intended solely for obtaining necessary intelligence".⁶² Congress also established two committees: one in the House chaired by Congressman, Otis Pike⁶³ (Democrat, New York); the other in the Senate under Frank Church (Democrat, Idaho). The Church Committee, by its hearings and reports, succeeded in 1975 and 1976 in persuading the consensus in Congress that its suspicions were not wholly unfounded, in other words, that secrecy had indeed led to many abuses in the conduct of United States intelligence operations.⁶⁴ As a result, intelligence agencies were laid under a statutory obligation to keep a special Senate intelligence committee informed, not merely to respond truthfully to Congressional inquiry.⁶⁵

The Congressional Budget and Impoundment Control Act of 1974⁶⁶ was passed in response to past Presidential impoundment of appropriated funds, the ordering of the bureaucracy not to spend money appropriated by Congress.⁶⁷ Nixon based his expansive impoundments, which exceeded \$18 billion in Financial Year 1973 alone, on vague language in the Antideficiency Act authorising the President to effect savings resulting from unspecified

"other developments" following the availability of appropriations. The Impoundment Control Act narrowed the basis for impoundments by removing the ambiguous "other developments" phrase from the Antideficiency Act, leaving only providing contingency reserves. It also established procedures for Congressional review and control of impoundments.⁶⁸

In 1970 President Nixon through a reorganisation plan enlarged the old Bureau of Budget into the more powerful Office of Management and Budget. Although the director and deputy director of the O.M.B. exerted far more authority than Cabinet officers they were appointed by the President without the advice and consent of the Senate. However, this changed in 1974 when President Nixon approved an Amendment to the Budget and Accounting Act of 1921. The new measure exempted incumbents, but required future directors and deputy directors of the O.M.B. to receive Senate confirmation.⁶⁹

Increased Congressional influence also included significant foreign affairs initiatives in matters of international business. For example, in the Tax Reform Act of 1976 Congress determined that foreign tax credit would be denied to firms that cooperated with the Arab boycott against Israel.

A further Congressional action intended to curb Presidential powers was the National Emergencies Act (N.E.A.) of 1976.⁷⁰ Focusing on the extensive grants of power to the President in national emergencies dating as far back as the 1930s, this legislation terminated, effective in September 1978, the states of emergency declared on March 1933 to deal with the Great Depression; December 1950, to respond to Chinese intervention in the Korean War; March 1970, to handle a postal strike and, August 1971, to implement currency restrictions due to an international monetary crisis. The powers based on these emergencies included the seizure of property and commodities, the imposition of martial law and the seizure and control of all means of transportation and communication. Together these four emergencies had given the United States forty - one years of emergency rule and were the basis of forty statutes administered by the executive branch. The purpose of the

National Commitments Act was to restrict the President's use of emergency powers to actual emergencies.⁷¹

It is interesting to note that the N.E.A. resembled the War Powers Resolution in several important ways: (1) Title I in effect terminated all four existing Presidentially declared emergencies, providing a two - year period of grace to allow for orderly adjustment. This provision paralleled Section 8(a) of the War Powers Resolution which similarly created a "clean slate" by declaring that no past provisions of laws or treaties could be inferred to bestow authority on the President to introduce United States forces into hostilities. Henceforth, both national emergencies and undeclared wars were to occur within the procedural framework newly established by Congress, (2) Title II of the N.E.A. prescribes dual Congressional controls on future proclamations of emergencies using the approach of the War Powers Resolution. It provides for the repeal of any state of emergency by Congressional approval of a concurrent resolution. It also contains an automatic termination of any national emergency one year after its declaration. In the later case, however, within ninety days of termination, the President can simply declare the emergency will stay in effect for another period of time, up to one year. (3) The N.E.A. contains rules similar to those in the War Powers Resolution for giving concurrent resolutions swift consideration in Congress: unless waived by a majority vote, the rules protect the resolution against being held up in committee in both Houses, or filibustered in the Senate.

In 1976 the Clark Amendment⁷² to the International Security Assistance and Arms Export Control Act denied funds for military operations in Angola "unless and until...Congress enacts a joint resolution approving the furnishing of such assistance".

The War Powers Resolution, the National Emergencies Act and the Impoundment Control Act all contain a form of Congressional veto. The

Congressional veto is a type of procedure whereby Congress, without passing new legislation, seeks to prevent the implementation of executive or administrative actions pursuant to existing statutory authority. The Congressional veto, which may be included in the authorizing legislation, may be exercised by concurrent resolution, or by a resolution of either house, or by one or more designated committees. Usually the veto must be exercised within sixty or ninety days. The objective of the legislative veto is to ensure greater oversight of the executive administration of programmes.⁷³

"With revolution, come those questions characteristic of radical breaks with an established order: Can the revolutionaries get organised or will they themselves be the victims of the disordered new energy?"⁷⁴

By the time Congress was ready to claim its first victories in its drive to achieve "coequal" status, as early as 1974, many in Congress itself were warning against carrying their struggle to excess. Republican Barbara Jordan of Texas argued, 'the revitalisation of Congress need not result in a weak Presidency. The need for a strong President in the years ahead is beyond challenge'.⁷⁵ Lee Hamilton, (Democrat, Indiana) even denied the objective of coequality, arguing that the effort of Congress to reassert itself should not be misunderstood to mean that Congress could truly become an equal branch of government. However, as Laski so rightly contended, Congress "is always looking for occasions to differ from the President and it never feels so really comfortable as when it has found such an occasion for difference. In doing so, it has the sense that it is affirming its own essence".⁷⁶ National interest can be severely impaired by the stalemates that occur while the two branches are locked in contest.

"The best-laid schemes o' Mice an' Men
Gang aft agley"
Burns.

"Revolutions occur when people lose patience and, acting in anger, seize the controls. It is not the preferred method of operating a ship".⁷⁷

The 1970s witnessed a rash of Congressionally-initiated foreign policy legislation which sought to limit the President's range of options on a number of foreign policy issues. The thrust of the legislation was to restrict the President's ability to dispatch troops abroad in a crisis and to prescribe his authority in arms sales, trade, human rights, foreign assistance and intelligence operations. Szamuely contends, "the legislative prohibitions were not merely meant to fetter the President's discretionary powers, they were actually meant to lead to different policy outcomes from those which the President as the 'Constitutional representative of the nation' had intended".⁷⁸ However well intended this legislation may have been, it has proved counterproductive and detrimental to the overall success of American foreign policy as will be demonstrated.

The Eagleton Amendment, for example, barred all use of funds for any military activities in, over, or off Vietnam, Laos and Cambodia. Thus, the letter of the law also prohibited the use of marines to evacuate the embassy in Saigon. The Eagleton Amendment certainly had not had this restriction in mind. Its purpose, rather, had been to prevent Richard Nixon ever taking the United States back into the Indochina conflict. Franck and Weisband point out, "that Eagleton probably intended no such consequence merely illustrates a hazard of controlling foreign relations with inflexible - and case specific - legislation".⁷⁹

By 1973 the pattern was clear: the Senate would introduce one amendment after another,⁸⁰ signalling to North Vietnam that the United States would eventually legislate itself out of Vietnam. The Administration lost

credibility and flexibility. By making it clear to North Vietnam that Congress would prevent the President from further pursuing the war, or from enforcing eventual peace, Congress relayed to the enemy that it would win in the end.

The repercussions of the Nelson-Bingham Amendments have been that every major arms sale agreement has been played out amidst vociferous national debate. Often the merits of the sale and its long-term foreign policy consequences are overlooked as legislators are put in the position of posturing for domestic policy considerations. Arms sales command so much media attention and legislators are rushed to adopt a stance, thereby often painting themselves into a corner. President Ford's agreement to sell HAWK surface-to-air missiles to Jordan illustrates both the positive and negative aspects of the Amendments. There were valid reasons for doubts regarding the sale; for example, stability in the Middle East. However, the negative aspects more than outweighed the positive.

In November 1974 Secretary Kissinger, during a bout of shuttle diplomacy, paid a visit to King Hussein in Amman. The King stressed the state's military vulnerability and argued that the lack of modern equipment was draining the loyalty of the Jordanian armed forces. The White House directed the Joint Chiefs of Staff to study Jordanian air defences and to make recommendations. It recommended the sale of HAWKs and stressed the morale problems of the Jordanian government, arguing that Hussein would be under pressure to seek alternative sources of arms if the United States refused. The White House cleared the Defence Department to negotiate the sale of an air defence system. However, aware of the criticism the transaction would encounter, it instructed the negotiators to de-emphasize the HAWK missiles and highlight less sophisticated systems such as the Vulcan.

Keeping Congress in the dark appears to have been the the Administration's deliberate policy. It calculated that the best way to get the deal past Congress was to present it with a fait accompli. A resolution of inquiry

moved in June by Representative Rosenthal received a bland, uninformative reply from White House aide, Max Friendersdorff. However, Friendersdorff's reply did indicate that a letter of offer was being prepared which would be reported to Congress just in time for the Congressional summer recess - when nothing could be done about it.

An acrimonious national debate ensued. In September, after a flurry of negotiations among the State Department, Defence, the White House, the Jordanians and Congress,⁸¹ a compromise was achieved: a letter would be sent to Congress by President Ford containing assurances that the HAWK missiles would be used only for defensive purposes and specifying all agreed limitations on the weapons system to be offered for sale.

In Congress there was general satisfaction that the President could no longer on his own, supply large quantities of sophisticated weapons abroad. The HAWK episode demonstrated that the Administration should seek Congressional advice much earlier in the process before a decision is reached regarding the sale of large-scale weapons systems to a foreign government. However, the open Congressional evaluations of foreign nations seeking to do business with the United States tend to have the effect of cancelling whatever goodwill the transactions were intended to achieve. King Hussein was clearly offended over Congress' public inquest into the merits of his regime. After the State Department and Congress had reached agreement, Hussein cancelled the whole deal, and for a time afterward was courted by the Soviet Union.⁸²

The Turkish arms embargo is a classic illustration of the disruptive effects of an ethnic minority upon Congress. Although concerned about the drug traffic emanating from Turkey, the larger goal of the Administration had been to keep Turkey a viable member of N.A.T.O. The major consequence of the arms embargo was a re-examination by Turkey of its ties to the United States. From the Turkish perspective, a loyal ally should not suffer the

indignities of an embargo - even a partial or symbolic one. As a result, the Turkish government took control of twenty-four American military installations in Turkey, concluded a treaty of friendship with the Soviet Union and accepted a large Soviet loan. Spanier and Nogee note, "instead of encouraging Greek - Turkish negotiations over Cyprus, the embargo only made Turkey more adamant".⁸³

Concerning the Hughes - Ryan Amendment, by conducting a public inquiry into the C.I.A., it exposed not only its supposed blunders, but also important information as to how the C.I.A. is organised, how it gathers intelligence and what kind of sources and methods it uses. The Hughes - Ryan Committee hearings confirmed to America's adversaries that clandestine operations would be severely curtailed in the future. The Amendment also shook the confidence of those friendly states which had cooperated with the United States in intelligence gathering and led many to reassess their relationship with America's intelligence community.

It is interesting to note that the Hughes - Ryan Amendment imposed the first real Congressional control over covert activities. Yet it was much less stringent than a version passed by the Senate, which would have required the President to report all covert activities to the relevant Congressional committees prior to their commencement. Prior notification was modified, at the House insistence, to a vaguer obligation of "timely reporting". In adopting the Hughes - Ryan Amendment, the Senate also rejected a far more radical amendment, proposed by Senator Abourezk (Dem. Dak.) that would have prohibited any agency of the government engaging in any activity within any foreign country which violated or was likely to violate, the laws of the United States or of such countries. Under the Hughes - Ryan Amendment, six committees and subcommittees had to be given "timely" information on covert activities, but the mechanisms for, and the practice of, Congressional oversight are inadequate.⁸⁴

The Amendment itself had several shortcomings. Firstly, the C.I.A. did not have to report to oversight bodies before implementing an operation; secondly, the reports did not have to be thorough; and thirdly, after receiving classified information in a vaguely mentioned "timely fashion", Congressional overseers had no veto power unless they were bold enough to violate the pledge of secrecy and halt C.I.A. activity by denying funds through a vote of the entire Congress.

The Hughes - Ryan Amendment encountered its first major test with the issue of C.I.A. covert action in Angola, the African nation just about to be liberated from the colonial bondage of Portugal and already riddled with civil war. Before 1975 the United States had backed one faction, U.N.I.T.A., and the Soviets another, the M.P.L.A. In January 1975 the Ford administration decided to increase the stakes through more covert political aid. In the following months the leaders of the six Congressional committees received notification. They made no outcry; members who had been briefed felt themselves constrained by their commitment to those briefing them. Then in July the Administration opted for covert military assistance to two African factions. Senior members of the Congressional committees duly received C.I.A. notices. This time however, Senator Dick Clark (Dem. Iowa) of the African Affairs Subcommittee of the Foreign Relations Committee asked for more detail. Clark was concerned that the United States was rejecting a viable diplomatic alternative and exaggerating the Soviet threat in Angola.

In September Ford notified the appropriate committees that military aid was being raised to the level of \$25 million. When in December the Administration informed the committees that an additional seven million dollars was being sent as covert military aid to Angola, Clark persuaded his Foreign Relations colleagues to report an Amendment to the 1976 Foreign Assistance bill to prohibit any funds for covert action in Angola. The Tunney Amendment⁸⁵ to the Defence Appropriations bill⁸⁶, by a count of 54:22 in the Senate barred covert activities in Angola; the House agreed by

323:99. A determined Congress had halted action as well as exposed the inadequacies of the Hughes - Ryan oversight.⁸⁷

However, the debate surrounding American covert involvement in Angola sent a clear signal to the Soviets and their Cuban proxies. They could see that the risk of American intervention was low and the possibility of continued American assistance to the pro - West faction, slim.⁸⁸ Post 1975, the number of Cubans in Angola doubled. The Soviet Union increased its military assistance to the M.P.L.A. and stationed warships in the vicinity of Angola. Successful Soviet intervention in Angola bestowed on the Soviets and Cuba the image of dependable allies and supporters of radical movements in Southern Africa. This is in sharp contrast to the United States which was seen as having lost its taste for foreign involvement in the wake of Vietnam and as being divided domestically over foreign policy. Hoxie notes, "whether Congress or the President was right...is here not the issue. What was wrong was the seeming inability of the United States to adopt a policy when 16,000 Cuban proxy troops of the Soviets decided the fate of a new - born nation".⁸⁹

The Jackson - Vanick Amendment attached conditions to trade with the Soviet Union on a most favoured nation status until it relaxed emigration restrictions on its nationals. Increased doubts over the integrity of Nixon - Kissinger foreign policy from conservatives as well as liberals grew. While liberals fought to restrain Kissinger from bellicosity in Southeast Asia, Conservatives suspected him of conceding too much and gaining too little in his dealings with the Soviet Union. There was also growing concern in Congress about the Middle East. Largely it was concern that the United States was not doing enough, or might not do enough, to safeguard Israel. These two concerns came together in support for the Jackson - Vanick Amendment.

The Jackson - Vanick case also illustrates the potentially close relationship between domestic politics and foreign policy. Despite the

intention of those who supported the Amendment, its passage reduced Soviet - Jewish emigration; the dramatic decline of Soviet - Jewish emigration is undoubtedly attributable to the passage of the Amendment.⁹⁰ Prior to its passage, the Soviets had indicated to Kissinger that they would allow a minimum of 35,000 Jews per year to emigrate. Had this occurred, at least 175,000 Jews would have left the Soviet Union in the period, 1975 - 1979. Instead only 139,000 were allowed to leave.⁹¹

The 1972 Trade Agreement and the expansion of Soviet - American trade had been an integral part of the Nixon - Kissinger approach to the Soviet Union, and its defeat marked a serious reversal in the executive branch's design and implementation of foreign policy and detente itself. The purpose of the trade agreement had been to use American trade and technology, both of which the Soviets needed, as an incentive for the Soviets to restrain themselves politically and not to unilaterally exploit all the available opportunities to expand their influence. However, as a result of the Jackson - Vanick Amendment, when President Carter sought to penalise the Soviets for their invasion of Afghanistan, there were relatively few ways in which he could do so. Had American - Soviet trade grown to the level of \$5 billion - \$8 billion by 1980, America would clearly been in a better position to influence the Soviet Union and to achieve its own foreign policy goals. Spanier and Nogee write, "the point is that Congress, in pushing for a relatively limited though desirable objective jeopardized a larger and more important policy".⁹²

Similar problems arose with the Harkin Amendment⁹³, which stipulated that no assistance could be provided to "any country which engages in a consistent pattern of gross violations of internationally recognised human rights", unless the President "determines that such assistance will directly benefit the needy people in such countries and reports such determination to Congress". The Amendment also provided that within thirty days either House of Congress by resolution, could override this Presidential determination.

Since 1976, there have been increasingly detailed annual reports on all 82 recipient states. Military sales credits to Argentina were cut from the \$32 million authorised by Congress to \$15 million. Military aid was reduced for Ethiopia and Uruguay, and in 1977 the Carter Administration cited human rights violations in refusing to sign a new security assistance agreement with Nicaragua. In response Nicaragua rejected further military aid, as did Uruguay. Brasil refused military credits and cancelled a 25 - year old military assistance treaty with the United States. El Salvador and Guatamala ended their military aid relationship with America. Ethiopia turned increasingly to the Soviet Union and Cuba for military support in facing the Somali and Eritrean guerillas. Thus, the united States excluded itself from vital and unstable areas of the globe when it was especially important that America play a leadership role and provide some degree of consistency.

Uncertainties about where Central America was going contributed to conflict in Washington over President Carter's's policy of relinquishing control of the Panama Canal. The factors shaping American canal policy were diverse. Of concern were American strategic needs, United States security obligations to itself and its allies, the naval posture of the Soviet Union in the Atlantic and the Caribbean, the Soviet - Cuban military alliance, the flow of raw materials from Latin America to the United States and the effect of possible war on the territory which could lead to the sabotage of the operation of the canal.

However, what is interesting to note regarding the Panama Canal treaties is that even though Congress was involved in the formulation and negotiation of the treaties to a great degree, the treaties passed with a margin of only one vote to spare. Although the Senate leadership from both parties favoured treaty passage, a large number of Senators remained uncommitted right up to the final days when the votes were taken. This situation forced President Carter and his staff to make numerous personal contacts with these Senators. Hours of debate and compromise, the problems created by Senate changes in

the treaties and the open attacks on Panama, its people and President Torrijos created negative results. The President's position in national and international leadership was weakened by the whole process. He could not marshall the Senate votes. The treaties eventually passed,⁹⁴ but as Spanier and Noguee point out, "perhaps in our troubled times, the treaty process may be too difficult. With strong public opinion based on ignorance, a proliferation of strong and active interest groups, weak leadership in Congress and a weakened executive; the whole treaty process may be so onerous that controversial treaties in the future will seldom be able to be ratified".⁹⁵

Those opposed to or skeptical about S.A.L.T. were so because of their anxiety about the mixture of expansionist Soviet - Cuban behaviour in Africa and the growing Soviet military arsenal. The Soviets had, since S.A.L.T. I replaced their old missiles with an entire new generation of missiles. Although the SS-19 was considered by the Defence Department as the more dangerous missile because of its great accuracy, the critics focused on the huge SS-18 and the Carter Administration's failure to get Moscow to accept far fewer than just over 300 heavy missiles. By contrast, Carter had cancelled the B-1 bomber intended as a replacement for the aging B-52, slowed the development of the new Trident submarines and Trident I and II S.L.B.M.s.

Whether S.A.L.T. II would finally have received Senate approval or not, had the Soviets not invaded Afghanistan in late December, 1979, will never be known. However, most observers felt that the "real" reason President Carter "temporarily" withdrew the treaty from Senate consideration at the time was not to punish Moscow for its aggression, but to save himself from probable defeat and a political setback in the Senate."As one Russian observer asked during the American Salt II debate: 'With whom in America can we have dealings? If the President needs to coordinate his actions and stand

with the Congress, why isn't this done before and international agreement is concluded?" 96

The era of Congressional revival was long overdue. However, Franck and Weisband posit, [experience] poses "crucial questions about...the ability of the United States to play a coherent, effective role as a superpower in the new era of Congressional activism". 97

Chapter 3. Footnotes.

1. Lyndon B. Johnson.
2. 16, 000 by 1963.
3. Less than one hundred during the Kennedy Administration.
4. Arthur M. Schlesinger Jnr, The Imperial Presidency, (Boston, Houghton Mifflin, 1973), p.177.
5. Idem. In 1954, with Eisenhower as President, Johnson has disclaimed any wish to take responsibility out of the hands of the "Constitutional leader". Once Johnson himself was the "Constitutional leader", it could be assumed that he would not take a narrow view of Presidential prerogative. See, Arthur M. Schlesinger, The Imperial Presidency, op.cit. p.178.
6. Peter Calvocoressi, World Politics Since 1945, (New York, Longman, 1982), p.309.
7. Indeed, there is some question as to whether the Tonkin incident ever took place.
8. Later Johnson would write in his memoirs, "part of being ready, to me, was having the advance support of Congress for anything that might prove to be necessary. It was better to have a firm Congressional resolution, and not need it, than some day to need it and not have it". Lyndon B. Johnson, The Vantage Point Perspectives of the Presidency, 1963 -1969, (London, Weidenfeld and Nicolson, 1971), p.116.
9. See, Appendix 1
10. Arthur M. Schlesinger, The Imperial Presidency, op.cit.p.179.
11. R. Macridis, Foreign Policy in World Politics, (Englewood Cliffs, New Jersey, Prentice-Hall, 1976), p.164.
12. Godfrey Hodgson, All Things to All Men. The False Promise of the American Presidency, (London, Weidenfeld and Nicolson, 1980), p.148. For a history of American involvement in Indochina see David Halberstam, The Making of a Quagmire, (New York, Random House, 1965)
13. This was the traditional usage of executive power and did not require Congressional assent.
14. For fuller details of the Dominican Republic, see Lyndon Baines Johnson, The Vantage Point. Perspectives on the Presidency 1963 - 1969, op.cit. pp.187 - 205.
15. Arthur M. Schlesinger Jnr, The Imperial Presidency, op.cit. p.187.
16. Relying on their Constitutional authority as Commander-in-Chief and on their duty to protect American lives and property, Presidents between 1789 - 1970 ordered the use of armed forces abroad on at least 165 occasions. On only five of those occasions was there a declaration of war by Congress. See, Louis Fisher, President and Congress, (New York, Free Press, 1977), p.177.

17. For defence of Nixon's decision to invade Cambodia, see, Richard M. Nixon, No More Vietnams, (London, W.H.Allen, 1986), R.N. The Memoirs of Richard Nixon, (London, Penguin, 1978), Henry Kissinger, The White House Years, (London, Weidenfeld and Nicolson, 1979) and Years of Upheaval, (London, Weidenfeld and Nicolson, 1982). For full account of American incursion into Cambodia, see, William Shawcross, Sideshow. Kissinger, Nixon and the Destruction of Cambodia, (London, Andre Deutsch Ltd, 1979), Malcolm Caldwell and Lek Tan, Cambodia in the Southeast Asian War, (London, Monthly Review Press, 1975), H.R.Haldeman and Joseph DiMona, The Ends of Power, (London, Sedgewick and Jackson, 1978), Robert L. Gallucci, Neither Peace Nor Honour, (London, Johns Hopkins University Press, 1975)

18. In 1971, the Loatian cockpit was invaded by South Vietnam With American air support.

19. Arthur M.Schlesinger Jnr, "Congress and the Making of American Foreign Policy", Foreign Affairs, Vol.51, no.2, pp.102 - 103.

20. Until then, the whole thrust of American foreign policy seemed to be toward strenghtening and legitimising the implied powers of the President in foreign policy.

21. John Spanier and J. Noguee, Congress, the Presidency and American Foreign Policy, (New York, Pergamon Press, 1981), p.IX.

22. Norman J. Ornstein, "The Constitution and the Sharing of Foreign Policy Responsibility", in Edmund S. Muskie, Kenneth Rush and Kenneth W. Thompson (Ed), The President, The Congress and Foreign Policy, (New York, University Press of America, 1986), p.53.

23. Allende was leader of a coalition which embraced Socialists and Communists. During his election campaign, he promoted his relations with Cuba's Castro.

24. See Thomas G.Paterson, "Oversight or Afterview?: Congress, the C.I.A. and Covert Actions Since 1947", in Michael Barnhart (Ed), Congress and United States Foreign Policy. Controlling the Use of Force in the Nuclear Age, (New York, State University of New York Press, 1987), p.162.

25. Godfrey Hodgson, All Things To All Men. The False Promise of the American Presidency, op.cit. p.40.

26. See, Leon Jaworski, The Right and the Power. The Prosecution of Watergate, (New York, Kangaroo Books, 1977)

27. In order to reconcile their belief that the war could not be won with their belief that the American people would not forgive an Administation which admitted to that fact, the Administation decided to tell the American people that the war was being won when it was actually being lost. Godfrey Hodgson, All Things To All Men. The False promise of the American Presidency, op.cit. p.41.

28. Ibid. p.43.

29. Congressman John Brademas, quoted in Thomas E.Cronin, The State of the Presidency, (Boston, Little Brown and Comp, 1980), p.187.

30. Quoted in James L. Sundquist, The Decline and Resurgence of Congress, (Washington, Brookings Institution, 1981), p.5

31. Thomas M. Franck and Edward Weisband, Congress in American Foreign Policy, (Oxford, Oxford University Press, 1979) p.83.
32. Quoted in James L.Sundquist, The Decline and Resurgence of Congress, op.cit. p.1.
33. Idem.
34. The impoundment issue was an extension of the "battle of the budget" of the previous year: Nixon requested that Congress set a firm ceiling on expenditures for the coming financial year of \$250 billion, threatening to veto appropriations bills that went beyond that limit. The Administration claimed authority to make cuts without any new delegation of authority. The House proved compliant and the Senate voted to give the President a similar delegation of authority. See, Ibid. pp.2 - 4.
35. Nixon had proposed consolidating seven Cabinet departments concerned with domestic matters into four. After Congress failed to act, he appointed four Cabinet members as assistants to the President to coordinate the seven. Details from James L. Sundquist, The Decline and Resurgence of Congress, op.cit. pp.1 - 2.
36. Ibid. p.5. When Congress declined to 21% in February, 1974, it was actually eight points lower in that poll than ever so unpopular a President as Nixon.
37. James L.Sundquist, The Decline and Resurgence of Congress, op.cit. p.7.
38. It is ironic that the democratisation of American foreign policy occurred precisely as the United States' secure position of leadership began to erode, with American armies defeated in Asia, Soviet parity in weaponry and the dollar in chaos.
39. Godfrey Hodgson, All Things To All Men. The False Promise of the American Presidency, op.cit. p.41. For an interesting analysis of the Congressional resurgence see Martin E. Goldstein, "Congressional Participation in Foreign Policy Before and After Watergate", Political Science, Vol.27, no.1 & 2, July to December 1975
40. Recorded votes are when the actual names of members voting one way or another are noted
41. Unrecorded votes are when only the number of dissenting and consenting members are counted
42. Godfrey Hodgson, All Thing To All Men. The False Promise of the American Presidency, op.cit. p.149.
43. To avoid the appearance of a full military alliance.
44. David M. Abshire, Foreign Policy - Makers: President V's Congress, The Washington Papers, (London, Sage Pubs, 1979, pp.49 -50. The Symington Subcommittee hearings were to expand to cover American military commitments around the world.
45. For fuller details regarding the Senate Foreign Relation Committee, see, D.G. Henderson, "The Senate Foreign Relations Committee", Washington Quarterly, Vol.2, Part 2, 1979, and for a study of the Committee before and immediately after the Second World War, see, David N. Farnsworth, The Senate

Committee on Foreign Relations, (Illinois, University of Illinois Press, 1961).

46. The National Commitments Resolution was the legislative precursor of the War Powers Resolution. However, it did not require the concurrence of the House, it was merely a means of telling the Administration that the Senate recognised no commitment in Vietnam. See James L. Sundquist, The Decline and Resurgence of Congress, op.cit. pp.247 - 252

47. David M. Abshire, Foreign Policy Makers: President V's Congress, op.cit. p.50.

48. The appropriations step was not taken earlier as Congressmen were reluctant to lay themselves open to the charge of failing to support American soldiers in the field of battle and for the glory of the United States. It is ironic that the rising challenge to Presidential war was centred outwith Congress, in the campuses and the media

49. For full account of debate surrounding the Cooper - Church Amendment, see, David M. Abshire, Foreign Policy Makers: President V's Congress, op.cit. pp.51 - 53.

50. Ibid. p.53.

51. P.L. 93 - 154.

52. P.L. 92 - 156.

53. For history of the Mansfield Amendment, see, David M. Abshire, Foreign Policy Makers: President V's Congress, op.cit. p.54.

54. P.L. 93 - 152.

55. P.L. 93 - 148.

56. For background and analysis, see, Chapter 4 of thesis.

57. P.L. 92 - 403.

58. In the thirty years from 1940 - 1970, the President concluded no fewer than 5653 executive agreements and sent only 310 to the Senate for its advice. See, Louis Fisher, President and Congress, op.cit. p.45. Some of the most important agreements in the mid Twentieth Century were not presented to the Senate. These included the war time agreements at Yalta and Potsdam.

59. From Thomas M. Franck and Edward Weisband, Foreign Policy By Congress, op.cit. p.68.

60. P.L. 93 - 559.

61. For greater detail, see, Thomas M. Franck and Edward Weisband, Foreign Policy By Congress, op.cit. pp.98 - 100. Prior to 1974, the law had merely stipulated that the Secretary of State report "significant" arms sales half yearly to Congress.

62. P.L. 93 - 189

63. The Pike Committee collapsed as a result of internal disagreement, in part caused by intensive lobbying by the White House and the C.I.A. and in

part by the fuss over the leaking of documents to a television reporter, Daniel Schorr.

64. For the history, see, Thomas G. Paterson, "Oversight or Afterview?: Congress, the C.I.A., and Covert Actions Since 1947", op.cit., Stansfield Turner, Secrecy and Democracy: The C.I.A. In Transition, (Boston, 1985), Norman D. Sandler, 28 Years of Looking the Other Way: Congressional Oversight of the Central Intelligence Agency, 1947- 1975, (Cambridge, Mass. 1975).

65. In 1980, the Hughes - Ryan Amendment was modified to require notification of covert actions to only two intelligence committees, previously it had been eight.

66. P.L. 93 - 344.

67. Among the most bitter conflicts between Nixon and Congress was that involving Nixon's sweeping impoundment of funds so as to substitute his own spending priorities for those of Congress.

68. The Statute classifies impoundments as recessions and deferrals. Recessions (requests to eliminate projects that Congress has funded) must be approved by both the House and Senate; Deferrals (requests to delay spending) must be disapproved by either House. Norman C. Thomas, "Presidential Accountability Since Watergate", Presidential Studies Quarterly, Vol.34, 1978, and Martin E. Goldstein, "Congressional Participation in Foreign Policy Before and After Watergate", Political Science, Vol.27, nos. 1 & 2, 1975.

69. P.L. 93 - 250

70. P.L. 94 - 412

71. See, Harvey G. Zeidenstein, "The Two Presidencies Thesis Is Alive and Well and has Been Living in the U.S.Senate Since 1973", Presidential Studies Quarterly, Vol.XV, no.4, Fall, 1981. For further details, see, A.S. Klieman, "Preparing for the Hour of Need: Emergency Powers in the United States", Review of Politics, Vol.41, 1979, Norman C. Thomas, "Presidential Accountability Since Watergate", op.cit., Harvey G. Zeidenstein, "The Two Presidencies Thesis is Alive and Well and has Been Living in the U.S. Senate Since 1973", op.cit.

72. Later the Tunney Amendment, P.L. 94 - 212. See Footnote 85

73. Details of Congressional resurgence, see, James L. Sundquist, The Decline and Resurgence of Congress, op.cit., Harvey G. Zeidenstein, "The Reassertion of Congressional Power: New Curbs on the President", Political Science Quarterly, Vol.93, 1978, Thomas E. Cronin, "A Resurgent and the Imperial Congress", Political Science Quarterly, Vol.95, no.2, spring 1987

74. Thomas M. Franck and Edward Weisband, Foreign Policy By Congress, op.cit. p.3.

75. Quoted in James L.Sundquist, The Decline and Resurgense of Congress, op.cit. p.460.

76. Harold J. Laski, The American Presidency. An Interpretation, (London, George Allen and Unwin Ltd, 1952), p.123.

77. Thomas M. Franck and Edward Weisband, Foreign Policy By Congress, op.cit. p.2

78. George Szamuely, "The Imperial Congress", Commentary, Vol.84, Part 3, 1987.

79. Thomas M. Franck and Edward Weisband, Foreign Policy by Congress, op.cit. p.29. See also, Chapter 1.

80. For example, the Cooper - Church Amendment, the McGovern - Hatfield Amendment and the Eagleton Amendment.

81. Represented by Representative Bingham and Senator Case.

82. Although diplomacy and Jordan's dependence on superior American technology wooed Hussein back.

83. John Spanier and J. Noguee, Congress, the Presidency and American Foreign Policy, op.cit. p.196. For fuller details, see, Ibid. Chapter 5, and Thomas M. Franck and Edward Weisband, Foreign Policy By Congress, op.cit. Chapter 2.

84. See, Ibid. p.117.

85. Originally, the Clark Amendment to the International Security Assistance and Arms Export Control Act denied funds for military operations in Angola, "unless and until...Congress enacts a joint resolution approving the furnishing of such assistance". Political bargaining transformed the Clark Amendment into the Tunney Amendment.

86. Where it was assumed that the C.I.A. budget for its Angolan operation rested.

87. For greater detail, see, Thomas H. Paterson, "Oversight or Afterview?: Congress, the C.I.A. and Covert Actions Since 1949", in Michael Barnhart (Ed), Congress and United States Foreign Policy. Controlling the Use of Force in the Nuclear Age, op.cit. p.163 - 164

88. Prior to the vote in Congress, President Ford had issued a stern warning to the Soviets, who had an airlift underway. Based on that warning, the airlift was at least temporarily halted. As soon as the Clark and Tunney Amendments were passed, however, the Soviet airlift to Angola was resumed with increased tonnage and large numbers of Cuban expeditionary forces moved in as well.

89. R. Gordon Hoxie, "The Not So Imperial Presidency: A Modest Proposal", Presidential Studies Quarterly, no.10. 1980. In part, Congressional reaction can be explained as reaction to the covert activities of Watergate.

90. Emigration of Jews from the U.S.S.R.

1967 - 1400	1973 - 30,600
1968 - 380	1974 - 17,000
1969 - 2900	1975 - 18,500
1970 - 1040	1976 - 14,500
1971 - 12900	1977 - 17,000
1972 - 31200	1978 - 29,000

From: John Spanier and J. Noguee, Congress, The Presidency and American Foreign Policy, op.cit. p.121.

91. For greater detail, Ibid. p.17.

92. Ibid. p.196.

93. P.L. 94 - 161.

94. The treaties specified that from the period, 1977 - 2000, the canal would be under joint operation, American troops would remain there and the canal would be under semi - U.S. sovereignty. This would be the transitory stage leading to the Year 2000 to infinity, when the defence and operation of the canal would be Panamanian.

95. John Spanier and J. Nogee, Congress, the President and American Foreign Policy, op.cit. p.104. For detail, see, Ibid. Chapter 7, and Thomas M. Franck and Edward Weisband, Foreign Policy By Congress, op.cit. pp.275 - 286.

96. Quoted in John Spanier and J. Nogee, Ibid. p.XI

97. Ibid. p.15.

Chapter 4: The Wars Powers Resolution: Symbol or Substance?

"War is nothing but the continuation of politics with the admixture of other means" ¹

Clausewitz

"Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand".²

Hamilton, Federalist 74.

"The circumstances that endanger the safety of nations are infinite, and for this reason, no Constitutional shackles can wisely be imposed on the power to which the care of it is committed".³

Hamilton, Federalist 23.

In interpreting the Congressional power to declare war, there are two considerations to bear in mind: firstly, at the time of the Constitutional Convention, a formal declaration of war was neither required by conventional international law nor practiced as such⁴; secondly, the Founding Fathers drew a distinction between offensive and defensive hostilities.

The August 1787 draft Constitution of the Committee of Detail⁵ would have given the legislative branch the power to "make" war. It provided that the "legislature of the United States shall have the power...To make war..."⁶ This bore a striking resemblance to the Articles of Confederation, which vested the "sole and exclusive right of power of determining on peace and war" to the Continental Congress.⁷

When the war clause was considered in debate on August 17 1787, Charles Pinckney of South Carolina opposed placing the power in Congress: "Its proceedings were too slow...The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions".

Pierce Butler of South Carolina proposed vesting the power in the President, who would have all the requisite qualities, and would not make war but when the nation would support it. Butler's opinion shocked Gerry of Massachusetts who "never expected to hear in a republic a motion to empower the Executive alone to declare war". On the motion of James Madison and Elbridge Gerry, however, Congress' power to "make war" was changed to give Congress only the power to "declare war", that is, initiate war, leaving the Executive the power to repel sudden attacks.⁸

A study of the Constitution prepared by the Congressional Research Service of the Library of Congress concluded in 1973, "The sentiment of the Convention, as best we can determine from the limited notes of the proceedings, [was] that the potentially momentous consequences of initiating armed hostilities should only be called up by the concurrence of the President and both Houses of Congress...Although the change from "make" to "declare" could be read to give Congress the mere formal function of recognising the state of hostilities,...it appears more likely that the change was intended to insure that the President was empowered to repel sudden attacks without awaiting Congressional action and to make clear that the conduct of the war was vested exclusively in the President".⁹

The War Power Provision of the Constitution.

As approved by the Constitutional Convention and ratified by the states, the war power provision of the Constitution, Article 1, Section 8, clauses 10 - 15 is as follows:

"The Congress shall have power...

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

To provide for organising, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the disciplines described by Congress..."

Related to this is the Commander-in-Chief provision, Article II, Section 2, the purpose of which was to provide civilian command of the armed forces, action in an emergency, and unified action in time of war.¹⁰

Scholars have long disagreed whether this merely confers a title upon, or implies additional powers for the President. However, Hamilton appeared to offer a modest definition. In Federalist 69 he stated the office "would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the Confederacy..." He contrasted this limited authority to the uncontrolled military powers of the British King, who was free to declare war and raise and regulate the fleets and armies, "all of which, by the Constitution under consideration, would appertain to the legislature".¹¹

Thus Congress was nominally empowered to declare war, but only five wars have been declared and in only one, (the war of 1812), did members of Congress actually debate the merits of entering into hostilities.

The Rise of Presidential War

Executive Prerogative

The idea of gubernaculum¹² has survived in the form of executive prerogative.¹³ Locke argued that cases arise where the executive official has to use power "for the good of the society" until the legislature can gather to pass law. Locke maintained that a rigid observance of the laws may prove more detrimental than the temporarily vesting in the executive the responsibility to take action for the public good. Thus Locke, himself, the great influence of the American Constitution and intellectual champion of limited government, had acknowledged that in times of dire necessity, "the laws themselves should...give way to the executive power".¹⁴

After Congress had recessed in 1807, a British vessel fired on the American ship Chesapeake. Jefferson ordered military purchases for the emergency, reporting his actions to Congress after it had convened. Lincoln followed suit in his extraordinary Civil War actions. In April 1861 with Congress in recess, Lincoln issued proclamations calling forth the state militias, suspending the writ of habeas corpus, and imposing a blockade on rebellious states. Fisher writes, "under these extraordinary circumstances, Lincoln believed it more important to preserve than to observe the Constitution"; Roosevelt during World War II ordered over 100,000 Japanese¹⁵ into "relocation centres" and Truman in 1951 dispatched troops to Korea without Congressional approval.¹⁶

Defensive War

That the Founding Fathers drew a distinction between defensive and offensive hostilities is demonstrated by the Congressional distinction between to "make" and "declare" war, but throughout the Nineteenth Century the concept of defensive war was limited largely to protective actions along the borders of the United States.¹⁷ However, President Polk "invited" war in 1846 by sending troops into disputed territory along the Mexico - Texas border. Such action set the pattern for future Presidents. For example, President McKinley defended intervention in Cuba in 1898 by describing the conflict as 'right at our door'.¹⁸

Post World War II, with American bases scattered around the world and as military commitments became embedded as defence treaties, the Administration no longer confined the notion of "repelling sudden attacks" to military actions right at our door. As Fisher notes, "the idea of a shrinking globe has been part of the conceptual shift behind the enlargement of Presidential power...Constitutionally, it shrinks not merely the globe but Congressional powers as well".¹⁹ In 1962, upon the discovery of missile sites in Cuba, President Kennedy announced that the launching of any nuclear missile from Cuba against any nation in the Western Hemisphere would be regarded as constituting "an attack by the Soviet Union on the United States requiring full retaliatory response upon the Soviet Union".²⁰

Life and Property Actions

With neither legal authority nor a declaration of war, Presidents have used force abroad,²¹ in the name of protecting life and property. They have justified their actions on the basis of the Constitution's executive responsibilities.

In 1860 an American vessel had been dispatched to Greytown²² in Nicaragua after an insult to an American diplomat and some property losses incurred by

an American business. When the Commander of the ship judged that local authorities had failed to make appropriate amends, he bombed the town and sent in troops and a Greytown resident sued for damage to his property. The Court in *Durand v Hollins* came to the Commander's defence: "as it respects the interposition of the Executive abroad, for the protection of lives and property of the citizen, the duty must, of necessity, rest in the discretion of the President. Acts of lawless violence, or of threatened violence to the citizen or his property, cannot be anticipated and provided for, and the protection to be effectual or of any avail, may, not infrequently, require the most prompt and decisive action".²³

Wilson followed the Greytown bombing example and ordered American troops to Veracruz, Mexico in 1914 and Eisenhower sent troops into Lebanon in 1958, "to protect American lives and by their presence there to encourage the Lebanese government in the defence of Lebanese sovereignty and integrity".²⁴ Nixon justified the Cambodian incursion in 1970 by claiming that enemy actions clearly endangered the lives of Americans who were in Vietnam and would constitute an unacceptable risk to those who would be there after the withdrawal of another 150,000.²⁵ Similarly, it was to protect American lives that the Nixon Administration defended American support for the South Vietnamese invasion of Laos in 1971.

Delegated Emergency Powers

Roosevelt declared thirty-nine emergencies in the space of six years.²⁶ This is important for once the nation is engaged in war, for example, Congress delegates new responsibilities to the Executive branch; often lacking in any real direction and the Courts regularly uphold these statutes. These delegations of authority remain in the hands of the President long after hostilities have ended and the troops are home: for example, the President has the power to determine when a state of war is

over. By 1971 the United States had been in a state of declared national emergency for thirty-eight years. ²⁷

Delegation of War-Making Power.

In the wake of President Truman's declaration of "police action" in Korea, the issue of the limits of Presidential war-making arose continually in Congress. However, in a series of moves, Congress removed itself from the decision-making process completely. Sundquist notes, "the power of decision over war and peace - held in such tight and rigid control by the Congress in the period of self assertion in the decade before World War II - slipped virtually wholly from its grasp".²⁸

The Great Debate

In 1951 Truman sent four divisions of troops to Europe to serve in the international army to be established under N.A.T.O. and placed under the command of General Eisenhower. As in the case of Korea six months prior, the President did not share his decision with Congress.²⁹ This proved unsatisfactory for Republican leaders of the Senate and Senator Taft (Rep. Ohio) opened the debate with a denunciation of 'secret executive agreements' that had led the nation to danger. Republican floor leader, Senator Wherry (Nebraska) introduced a resolution expressing the sense of the Senate that no troops be dispatched until Congress had approved the policy. However, Congress evaded the constitutional question. The Senate did not try to set America's defence policy by statute but only expressed its views by resolution³⁰, and the House declined the Senate's invitation to join in that expression. The resolution did not have the force of law and the President could still act according to his own interpretation of his powers.

Vietnam, 1954.

Eisenhower believed that Truman had made a tactical error in unilaterally committing American troops to Korea. Thus upon the vital confrontation between the colonial army and Communist rebels in Dien Bien Phu, Eisenhower made Congressional approval a prerequisite for involvement.³¹

Lyndon B. Johnson (Dem. Texas) raised the issue of support from America's European allies believing Congressional approval should depend on the participation of other European nations. However, Eisenhower failed to secure that support and for the moment America remained out of the war. But it is important to note that while the reservations expressed by Congress undoubtedly contributed to the President's decision to stay out of the war in 1954, Eisenhower's single meeting with five Senators and three Representatives cannot be construed as a significant shift in the balance of Presidential and Congressional decision-making in the favour of the executive.

The Formosa Resolution: the first blank cheque.

In 1955 Chinese Communists began to threaten the Nationalist - led islands of Quemoy and Matsu. Although Eisenhower perceived his authority to defend Formosa and other territories under Nationalist control as inherent in his capacity as Commander-in-Chief, the President sought Congressional approval in order to remove any doubt regarding America's willingness to fight. The resolution drew only three dissenting votes in each House.

The Middle East Resolution

Citing Soviet expansion in the Middle East and the instability of the region, post Suez (1956), Eisenhower requested a grant of authority to employ American forces there as might be necessary. In the absence of imminent danger, Eisenhower met with strong opposition to such a proposal.³²

However, again the Constitutional question was sidestepped as had been the case in the Great Debate. In the Senate, instead of authorising the President to use armed forces, an amendment by Humphrey (Rep.Minnesota) and Mansfield stated that, "if the President determines the necessity thereof, the United States is prepared to use armed force to assist". Two blank cheques had been signed: the Formosa and Middle East Resolutions. The President had asked Congress to delegate to him the power to decide whether to take the country into war. Congress willingly succumbed.³³

The Cuba Resolution.

Fear of Cuban Communism led to the Cuba Resolution of 1962. Sundquist notes that this one evaded the Constitutional question altogether by simply declaring the determination of the United States to prevent the spread of Communism in the hemisphere. How the decision would be made, in an emergency, was left to be determined. But the President had asserted that 'as President and Commander-in-Chief' he had all the authority he needed to use military force in any way that might be necessary. Congress did not reject this view.

The Berlin Resolution.

Soon after this Congress passed a similar resolution to deal with the Berlin crisis.³⁴ Yet again Congress evaded the Constitutional question. As in the Cuba Resolution, the Berlin statement made no reference to Presidential power but declared that 'the United States is determined to prevent by whatever means may be necessary, including the use of arms, any violation of [its] rights by the Soviet Union directly or through others'. Sundquist therefore suggested that " by this time a wealth of precedent had been established, through a dozen years of successive crises, that in the world wide confrontation with Communism it was for the President to set the policy, the Congress to support. In its blank-cheque resolutions, the

Congress agreed in advance to whatever he might do".³⁵ The Formosa Resolution delegated war-making power; the Middle East Resolution gave advance commitment to support whatever the President decided, and the Cuba Resolution delegated to the President how and when the terms of the Resolution be applied.

The Tonkin Gulf Resolution.³⁶

It was thus a short step for Congress to abdicate formally from war-making. In the wake of the Tonkin Gulf incident³⁷, Fulbright (Rep. Ark) rushed a Resolution through the Senate Foreign Relations Committee after brief testimonies from the Secretaries of State and Defence. The Resolution drew only two dissenting votes in the Senate and not one in the House. In Fulbright's opinion, the Resolution would authorise whatever the Commander-in-Chief felt necessary.³⁸

Thus as Schlesinger contends, "in the decade after Korea, Congress receded not only from the effort to control war-making power but almost in the effort to participate in it".³⁹

The War Powers Resolution

The Legislative History of the War Powers Resolution.

The American incursion into Cambodia placed the issue of war power at the forefront of Senate and House debate. In June 1970 the first Senate bill (S.3964, 91st Cong.) was introduced by Senator Javits and stipulated that the President could use the armed forces without prior approval, only to repel an attack on the United States itself or on American forces on the high seas or legally stationed abroad, or to fulfill national commitments to which both the executive and legislative branches were party. In 1970, a war powers resolution was introduced by Zablocki (Dem. Wisconsin) in the House (H.J. Res. 1355, 91st Cong.), and passed by a vote of 289 - 39. It

recognised that the President "in certain extraordinary and emergency circumstances has the authority to defend the United States and its citizens without prior authorisation from Congress". However, the President would be required "whenever feasible", to consult with Congress before sending American troops into armed conflict. He was also to report the circumstances necessitating the action; the Constitutional, legal and treaty provisions authorising the action, together with his reasons for not seeking Congressional authorisation beforehand; and the estimated scope of activities. The resolution omitted to define the exact conditions under which the President might act. In 1971 the House passed a similar resolution (H.J. Res. 1, 92nd Cong.). However, it omitted the qualifying phrase "whenever feasible".

The Senate refused to look at these weak efforts and instead put forward bill S.2956, the revised Javits bill, which constituted an attempt to list and, therefore, limit, the situations in which the President could use force on his own authority. The situations cited were:

- a) repelling or anticipating an armed attack upon the United States, its territories and possessions ,
- b) responding to an armed attack against the armed forces of the United States, whether at home or abroad, or forestalling an imminent threat against them,
- c) protecting American citizens and nationals while they are being evacuated from abroad,
- d) exercising his discretion under a prior statutory grant of authority.

Regardless, the President would only be allowed thirty days of war-making, even when acting within one of the four categories, after which time he would have to obtain the consent of Congress.

As a result of the vast differences between the House joint resolution and the Senate bill, much political manoeuvring ensued. The House again passed H.J. Res. 1 instead of S. 2956 and although conferees were appointed they

met only once toward the end of the Congress and the differences were not resolved.

The effort to codify Presidential war-powers entailed a number of risks: for example, there was the danger that due to ambiguous language, legislation might actually widen Presidential power instead of restricting it. In 1973 the Senate preceded with a new bill (S. 440, 93rd Cong.) which was virtually identical to S.2956, and the House passed H.J.542 put forward by (Morgan,[Dem.Pa.] - Zablocki,[Dem.Wisconsin]), which provided that any Presidential war could be ended by a concurrent resolution of both the House and Senate. The House version also stipulated that Presidential war-making authority would automatically end after 120 days unless renewed by a Congressional declaration of war; and required the President to consult with Congress, when possible, prior to deploying American troops, and to report to Congress within 48 hours of the commencement of hostilities. However, H.J.542 did not attempt to define the circumstances in which the President could use force without a declaration of war. The House and Senate passed their respective bills and the two went to conference committee where compromise was reached.

The final resolution was more like the House than the Senate version. The conferees adopted the broad approach of the House bill, but with two important differences. They dropped the provision that gave Congress a concurrent resolution veto on major peaceful foreign deployments, although they kept the requirement that the President report to Congress on these deployments. The conferees also abandoned the section of the Senate bill which stipulated the circumstances in which American forces can be involved in hostilities. ⁴⁰

To secure sufficient support for the Resolution's passage, especially with a Presidential veto looming, its sponsors traded away much of the substance of the resolve until little but symbol remained. What was left was just enough to rally the necessary support to overcome the President's

veto.⁴¹ Nixon vetoed the bill largely because he regarded it as impracticable and dangerous to fix in a statute the procedures by which the President and Congress should share the war power.⁴² He also perceived the legislation as encroaching on his power as Commander-in-Chief. However, the House by 284 - 135 and the Senate by 75 - 18 overrode the veto.⁴³

The War Powers Resolution In Practice.

Whilst Hamilton argued in Federalist 23, "the authorities essential to the common defence...ought to exist without limitation, because it is impossible to foresee or define the extent and variety of national emergencies, or the correspondent extent and variety of the means which may be necessary to satisfy them",⁴⁴ Craig has noted that the War Powers Resolution actually pits "Congress and the President against each other...[and] it does so resoundingly and before the entire world - with understandably detrimental effect".⁴⁵

The Administrations of Nixon and Ford established the pattern of Presidential compliance, or rather, non compliance with the Resolution.

The Major Instances of Presidential Non Compliance: The Nixon and Ford Administrations.

Evacuation of American Citizens from Cyprus

In July 1974 Greek - led national guardsmen tried to overthrow the government of Archbishop Makarios and achieve "enosis" (the unity of Cyprus and Greece). In response Turkish military units invaded Cyprus to protect Turkish Cypriots. Fighting escalated and the United States Ambassador to Cyprus requested military assistance in evacuating the American citizens who wished to leave the island. United States marine helicopters evacuated 384 American citizens and 82 allied nationals. The following day, in a joint

American and British rescue operation, a further 135 Americans and third country nationals were evacuated.

There is no record of any significant prior consultations with Congress nor was any War Powers Resolution report filed. The President argued that a report was not necessary because the areas where the helicopters landed were not part of a hostile zone; the mission was humanitarian in nature and; the American forces were not equipped for combat.

The consultation requirement of Section 3 of the Resolution⁴⁶ applies "before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances". The Cyprus evacuations are, therefore, not applicable. While it was feasible that the evacuation helicopters might come under fire under the false assumption that they were hostile, such an incident could not be described as "indicated by the circumstances".⁴⁷

Evacuations from Indochina.

Early in 1975 it became increasingly apparent that North Vietnam and the Khmers Rouges forces were close to defeating the noncommunist governments in Saigon and Phnom Penh. The Cooper - Church Amendment restricted American assistance to Cambodia and Congress also refused to supply South Vietnam with spare parts and ammunition. South Vietnam withdrew southward in the face of a Communist offensive. The question became when, not if, American nationals would be evacuated.

President Ford believed he had independent Constitutional authority as Commander-in-Chief to deploy American troops, "to protect American lives" and was, therefore, not restricted by the War Powers Resolution. - Most members of Congress concurred. During debate on the Cooper - Church Amendment in 1973, the provisions sponsors acknowledged that Congress could not deprive the President of his Constitutional powers - including the power to rescue threatened American citizens. Therefore, the President had the

power to order the use of United States Armed Forces to rescue endangered Americans. However, Ford decided to seek formal Congressional authorisation

Although in the case of the Danang, Phnom Penh and Saigon evacuations, the President did report within the required 48 hours, this is so only if the clock is taken to run when American forces entered foreign air space, rather than when the forces were dispatched or when the decision to commit was made. As a result of this, in each instance, the report reached Congress only after each military operation was completed. As Franck and Weisband note, "the reporting requirement thus conducted not one whit to Congressional codetermination of whether, when, or how to use force". ⁴⁸

The Mayaguez.

On May 12 1975 Cambodian naval patrol boats fired upon and siezed the S.S. Mayaguez - a United States merchant ship en route from Hong Kong to Thailand through international waters. Aside from his concern for the safety of thirty-nine American crew members, Ford also viewed the incident as an opportunity to reaffirm America's resolve, post Vietnam.

The first involvement of United States armed forces came within a few hours when a reconnaissance plane was dispatched from Thailand to locate the ship, when ships of the 7th Fleet were ordered into the Gulf of Siam, and when the 3rd Marine Division on Okinawa were put on combat alert. On May 12 American reconnaissance aircraft located the Mayaguez which was being escorted by Cambodian gunboats. The aircraft was hit by gunfire. On May 13 Ford, determined to prevent the ship and crew being taken to the Cambodian mainland where recovery would be more difficult, ordered that Koh Tah Island be isolated and that movement of the ship be prohibited. In the course of implementing orders American aircraft sank three Cambodian patrol boats and damaged four others. However, this did not prevent the transfer of the crew to the mainland.

Diplomatic efforts through the People's Republic of China, the Secretary General of the U.N., and Premier Pramot of Thailand, to secure the release of the ship proved unsuccessful, and on May 14 Ford ordered an assault on Koh Tang island, the boarding of the Mayaguez, and attacks against airfields and other military targets on the mainland.

The marines attacking Koh Tang ran into heavy fire. The Mayaguez boarding party found the ship empty, (unknown to them, the crew had safely boarded the United States destroyer, Wilson). Naval aircraft destroyed seventeen Cambodian aircraft and a number of amphibious craft. Forty-one men of the United States armed forces were killed.

"Taking note" of Section 4(a)(1) of the War Powers Resolution⁴⁹, the President reported to Congress early on May 15. However, it is difficult to conclude that the consultation provisions of Section 3⁵⁰ were complied with during the Mayaguez operation: the resolution requires consultation with Congress before the introduction of American forces into a potentially hostile situation. Ford ordered United States ships and aircraft into the area where seizure had taken place in the early afternoon of May 12 and the first shots were fired on May 13. Congress was not informed until late May 13.

However, one of the most interesting aspects of the Mayaguez affair was Congressional reaction. It is significant that the majority in Congress supported the President and believed that his action was proper under the Commander-in-Chief clause of the Constitution.⁵¹

Evacuation of American Citizens from Lebanon.

In the spring of 1976 the Lebanese Civil War intensified and an amphibious task force was stationed near the Lebanese coast in the event of having to evacuate the 1400 Americans in the country. In June the United States Ambassador Meloy and Counselor of the Embassy, Waring, were murdered. Ford instructed the American Embassy to help American citizens who wished to

depart Lebanon by overland convoy at the time. The situation deteriorated and Ford ordered United States naval vessels to assist in the evacuation, which occurred without incident. A month later a second evacuation took place as the situation further worsened.

Although Ford argued that the War Powers Resolution did not apply, he did submit two reports to Congress. However, Ford encountered similar difficulties as in the Danang incident: "We tried so hard to reach a third member of Congress that our resourceful White House operators had the local police leave a note on the Congressman's beach cottage door: 'Please call the White House' (Ford). Regardless Turner notes, "once again, there was less than full 'consultation' - but once again, there was little concern expressed because the operation had been a success" ⁵²

The Carter Administration.

The Zaire Rescue Mission.

In May 1978 a group of ex-Katangan gendarmes attacked the copper mining town of Kolwezi in southern Zaire, threatening the safety of the inhabitants, including French, Belgium and American nationals. The United States sent transport aircraft to support French and Belgium rescue operations. The operation lasted about one month and Carter did not submit a report under the War Powers Resolution.

In August the House Foreign Affairs Committee held hearings on the issue of Presidential compliance with the War Powers Resolution. The Administration argued that the aircraft were not involved in hostilities because they landed in secure areas more than one hundred miles from the sites of conflict; nor were American personnel equipped for combat. In general, Congress was satisfied with the Administration's stance.⁵³

The Iran Rescue Attempt

In November 1979 a band of Iranian Islamic fundamentalists seized control of the United States Embassy compound in Tehran and vowed to hold American diplomats and other personnel captive until the Shah of Iran was returned for trial. President Carter reported to Congress on April 26, 1980, that on April 24, an unsuccessful attempt had been made to rescue the hostages in Tehran. Carter reported to Congress within forty-eight hours of introducing combat forces into a foreign country. He cited his authority under the Constitution as the Chief Executive and the Commander-in-Chief, and in addition Section 8(d)(1) of the Resolution⁵⁴ which states that nothing in it "is intended to alter the Constitutional authority of the Congress or of the President". In other words, rescue operations conducted under the President's inherent Constitutional authority cannot be limited by provisions in the War Powers Resolution. ⁵⁵

The Reagan Administration.

Military Advisers to El Salvador.

In 1981 the Reagan Administration introduced United States armed forces into El Salvador as "advisers". Congress argued that the El Salvador situation required compliance under the the Resolution and criticised the Administration for failing to consult fully with Congress before committing the advisers. The State Department argued that the United States armed forces in El Salvador had not been involved in actual or imminent hostilities. The advisers were not equipped for combat and would be armed only with personal sidearms. They would not go on patrol with Salvadorian forces or otherwise be placed in situations where combat was likely. As such, Section 8(c) of the Resolution⁵⁶ was not applicable.⁵⁷

A Multinational Force and Observers for Sinai

President Reagan reported on March 19 1982 that American military personnel would be used as part of the Multinational Forces and Observers (M.F.O.) to help execute the peace treaty between Egypt and Israel in the wake of the Camp David peace process. When the U.N. proved unable to provide the M.F.O., the United States agreed to provide the ground troops for this purpose and the Reagan Administration committed itself to reporting under Section 4(a)(2) of the Resolution⁵⁸ immediately on the introduction of American forces into Sinai.

In the report the President emphasised that there was no intention or expectation that these members of the American Armed Forces would become involved in hostilities. Congressional approval for the M.F.O. was strong and , therefore, there was little criticism for the President's actions, either in substance or on procedural grounds, and the authorisation was legally approved in both Houses.⁵⁹

A Multinational Peacekeeping Force in Lebanon.

In June 1982 in response for the shooting of the Israeli Ambassador to Britain, Israeli Defence Force troops entered Lebanon for a major offensive against the P.L.O. In an effort to promote a peaceful resolution of events, President Reagan expressed a willingness to deploy a contingent of United States Marines as part of an international force for supervising the peaceful departure of P.L.O. forces from Lebanon. In August, in response to a formal request from the Lebanese government, approximately eight hundred marines, armed with normal infantry weapons arrived. Since the marines had been invited by the legitimate government of the country and the departure plan had been approved, the Administration took the stance that American forces were not being introduced into a hostile environment. However, keen to avoid a confrontation with key Congressional leaders, the President

submitted a report immediately following deployment without specifying under which sub paragraph the action was being taken. Indeed, as it turned out, during the few weeks of their deployment, there were no American casualties and no involvement in hostilities.

However, within days of the international peacekeeping force's withdrawal from Beirut, President - elect Gemayel was assassinated. Military forces loyal to Gemayel entered two refugee camps outside Beirut and murdered hundreds of people who were alleged to be P.L.O. sympathisers. In September, the Lebanese Cabinet requested the three countries that had participated in the original peace-keeping force to return to Beirut to restore order. The Reagan Administration complied with the request. There was little real consultation, but if one accepts the Administration's contention that the marines were not entering a hostile situation, there was no formal requirement under the Resolution to consult. On September 29 1982 twelve hundred marines began arriving in Beirut and Reagan submitted his war power report to Congress.

The marines were to serve for an unspecified time and would not engage in combat. They would, however, be equipped to exercise the right of self-defence. The President stated that the deployment was within his Constitutional authority to conduct foreign affairs as Commander-in-Chief. By not reporting under Section 4(a)(1)⁶⁰ or promising to remove the marines by a specified date, President Reagan had deprived Congress of its right to authorise withdrawal after 60 or 90 days. Reagan's decision not to submit a report under Section 4(a)(1) was consistent with the attitude of prior Administrations. Reagan filed three reports under the War Powers Resolution. Not once did he report that the forces were being introduced into actual or imminent hostilities.

After much debate, however, Congress passed the Multinational Force in Lebanon Resolution⁶¹, which invoked Section 4(a)(1) of the Resolution⁶² as of August 29, 1983, authorising the participation of the Marines in the

M.N.F. for eighteen months at the most. The compromise invoked key sections of the War Powers Resolution for the first time since it was enacted into law. Regardless, the President was able to maintain the marines in Lebanon for eighteen months - the modified resolution authorised the President, for the purpose of Section 5(b) of the Resolution⁶³, to keep the United States Armed Forces in the M.N.F. in Lebanon.⁶⁴

Grenada.

On 25 October 1983 Reagan advised the Speaker of the House and the President pro tempore of the Senate that he had deployed approximately 1900 Marines and Army airborne troops in Grenada. The deployment was ordered under the President's Constitutional authority to conduct foreign affairs and as Commander-in-Chief. In reporting to Congress, President Reagan stated that he was acting consistent with the War Powers Resolution but was not citing Section 4(a)(1)⁶⁵, which would apply when troops are introduced into actual or imminent hostilities. Therefore, his report did not trigger the Section 5(b)⁶⁶ time limit. In response, the House passed H.J.Res 402 that declared that sending troops into Grenada triggered Section 4(a)(1) of the War Powers Resolution. This Section would require that American forces be withdrawn after sixty days unless Congress authorised their continued presence under Section 5(b) of the Resolution. The Senate attempted similar action but the bill failed to pass.

However, in the event, the Congressional leadership did not wish to force the War Powers Resolution issue. They realised that the public was strongly in favour of Reagan's action, which became a military success. "Congressional reaction to the President's use of troops to rescue the United States citizens in Grenada was a reaffirmation of the right of the President to act in such circumstances".⁶⁷

Operation Prairie-Fire.

In a pattern reminiscent of the decision to invade Grenada, the Reagan Administration violated both the letter and the spirit of Section 3⁶⁸ of the War Powers Resolution when it used air power to retaliate against Lybian terrorism. As Fascell has stated, "any reasonable person would have concluded that there might be hostilities" and this ought to have triggered the consultation requirement. However, after the Lybian - American clashes below the "Line of Death", only two legislators publicly defended the Constitutional validity of the War Powers Resolution. ⁶⁹ Rubner notes, "Congressional acquiescence in the usurption of the war power can be attributed in large measure to the prevalent perception that in this instance, America's might was successfully brought to bear against an immensely unpopular, militarily weak and politically isolated foe".⁷⁰

Thus, from the Mayaguez to the Grenada incidents, even with the War Powers Resolution having the force of law, Presidents have managed to keep the initiative, undertaking limited military operations and reporting to Congress afterward. This can be seen as follows:

United States Troop Commitments, 1974 - 1986.

<u>Deployment</u>	<u>War Powers Application</u>
Cyprus Evacuation(1974)	No report
Cambodian Resupply(1974)	No report
Cambodian Reconnaissance(1974)	No report
Danang Sealift(1975)	Report/Sect.4(a)(2)
Cambodian Evacuation(1975)	Report/Sect.4(a)(2)
Vietnam Evacuation(1975)	Report/Sect.4
Mayaguez(1975)	Report/Sect.4(a)(1)
Lebanon Evacuation(1976)	No report
Korean Reinforcement(1976)	No report
Zaire Airlift(1978)	No report
Iranian Rescue Mission(1980)	Report/No sect.specified
Advisers in El Salvador(1981)	No report
Sinai Multinational Force(1982)	Report/Sect.4(a)(2)
Lebanon-PLO Evacuations(1982)	Report/No sect. specified
Lebanon-U.S.Evacuation(1982)	Report/No sect. specified
Chad Reconnaissance(1983)	Report/Sect.4
Lebanon Peace-Keeping Force(1983)	Report/Sect.4
AWACS to Chad(1983)	Report/Sect.4
Grenada Invasion(1983)	Report/Sect.4(a)(1)
Gulf of Sidra(1986)	Report/No statute cited
Libyan Retaliation(1986)	Report/No statute cited

Source: Daniel Paul Franklin, "War Powers in the Modern Context", Congress and President, Vol.14, Part 1, p.80 ⁷¹

An Assessment.

The War Powers Resolution is supposedly the centrepiece of the Vietnam / Watergate challenge to Presidential authority. However, well over a decade after the War Powers Resolution, after Lebanon, Grenada and the Supreme Court's decision in the Immigration and Naturalisation Service v's Chadha⁷², it is now apparent that whatever Congressional intent underlay the Resolution, any expectation that its methodology would actually lead to the application of joint Presidential - Congressional judgment in the war-making process was mistaken.⁷³

The Nixon Administration virtually ignored the War Powers Resolution due to the Administration's narrow definition of what constituted situations where imminent involvement in hostilities was clearly indicated by the

circumstances. The Ford Administration regarded only a clear potential for armed conflict prior to the introduction of troops as necessitating report. Regarding the Carter Administration, the report issued pursuant to the Resolution in the case of the Iranian rescue mission failed to specify the subsection under which the report was being made, and was submitted to Congress two days after American forces left Iranian territory. Reagan was consistent with the previous President in his disregard for the Resolution.

Analysis of the War Powers Resolution.

It was hoped that the efficacy of the Resolution would rest on three basic devices that would link the President to Congress: Presidential consultation, Presidential reports to Congress, and the Congressional termination of military action.

a) Consultation.

"Consultation as a process...requires as much active involvement on the part of Congress as on the part of the executive. Failure to consult is a constant complaint from Congress, but the fault quite often lies with the members of Congress rather than the executive. During the period, 1969 - '73, for instance, the National Security Council had a standing offer to brief any member of Congress on whatever foreign policy issue he desired. The ground rules for such briefings were to provide the fullest and most highly classified information on the issue...According to the records of the N.S.C., this offer was taken up only three times in five years" ⁷⁴

The majority of Congress' objections to the executive's implementation of the Resolution focus on the reluctance of the President to consult with Congressional leaders before committing troops to combat. However, the concept of prior consultation is a fallacy because Congress failed to make the practice compulsory or to establish procedures for emergency

consultation. In addition, there is no agreement as to what constitutes appropriate and adequate consultation: what or who is meant by "with Congress"? What is the definition of consultation? However, this is not to say that the Resolution has absolutely no effect on the prior planning and execution for as Allison notes, the sixty - day limit gives the President an incentive to plan interventions in such a way as to be brief.⁷⁵

b) Reporting.

The "compromise" Resolution resulted in a reporting requirement that allows the executive in all but the most extreme instances, the option of defining the application of law. Should (imminent) hostilities not be clearly evident, the President can chose to overcome Congressional vetoes by reporting pursuant to Section 4(a)(2)⁷⁶ or 4(a)(3)⁷⁷ subsections that do not trigger the termination options. In addition, because the reporting requirement allows 48 hours before a report must be made to Congress, the President has considerable leeway in the initial stages of deployment of troops, for example, Grenada; sufficient time for the United States to become inextricably involved in a conflict.

The reports supposedly include an explanation of the circumstances necessitating the introduction of the armed forces, a list of the enabling Constitutional and legislative authority, and an estimate of the scope and duration of involvement in hostilities. However, reports have largely been one - two page letters, "that proffer less information than might be gleaned from reading press coverage of the events".⁷⁸ Indeed, the report of the Mayaguez operation made no mention of the number of casualties nor the fact that bombing of a military airfield occurred after the ship and crew were in American custody. In none of the reports did the President acknowledge that he was meeting the reporting requirements of Section 4 of the Resolution.⁷⁹

c) Termination.

The legislative veto in the War Powers Resolution is on the surface, the strongest and most unambiguous section of the law. However, because a Congressional veto over the Commander-in-Chief's use of troops once those troops are already deployed is such a drastic weapon, it is difficult to imagine a situation in which Congress would use such a tactic. History shows that if a President uses the armed forces swiftly and successfully, Congress applauds; if otherwise, then Congress is powerless before a fait accompli.⁸⁰

Vietnam and the War Powers Resolution.

The ultimate irony of the War Powers Resolution is that the Vietnam involvement would probably have met the essential criteria of the Resolution had it been in effect at the time.

1. Effect on American Entry into the War.

Most Americans supported the war effort in 1965, and it seems certain that if President Johnson had reported to Congress as required by the Resolution immediately upon the beginning of sustained American bombing of the North, or the introduction of regular combat troops in the South, Congress would have quickly authorised a continuation of war.

2. Effect on Legitimacy.

Had the War Powers Resolution been in effect during Vietnam, no longer would it have been so starkly Johnson's or Nixon's war.

3. Effect on the Conduct of the War.

The Resolution would have compelled the President into tailoring his strategies more closely to the need to obtain Congressional approval. Thus,

the Resolution raises the Constitutional issue of Congressional interference in the President's role as Commander-in -Chief.

Allison writes that the principal side effects of the War Powers Resolution on the Vietnam War would have been: greater pressure to escalate, greater stage - managing in order to win Congressional approval, but, more importantly, with Congress voting up or down on the war every six months, debate would have intensified and division in the country exacerbated.⁸¹

The Question of Constitutionality.

"I love the Constitution, but I hate Nixon more".⁸²

Section 5(b) of the Resolution⁸³ would deprive the President of his Constitutional authority as Commander-in-Chief during a period of hostilities after a period of 60 days if Congress remained silent on the matter. The notion that Congress can by silence or inaction deny the President of his fundamental Constitutional powers in a time of national emergency is in violation of the system of separation of powers.

Section 5(c) of the Resolution⁸⁴ would allow Congress to deprive the President of his Commander-in-Chief powers at any time by passing a concurrent resolution. Such a Resolution does not have the effect of law because it is not submitted to the President for his signature or veto as stipulated by the Constitution's presentation clause.

The Supreme Court, in *Immigration and Naturalisation Service v. Chadha* (decided June 23, 1983), held unconstitutional the one - house legislative veto which allowed either House of Congress, by resolution, to overrule an executive decision. The Court based its decision on the bicameralism and the presentation clause of the Constitution.⁸⁵

The ironic and sad fact is that the War Powers Resolution, despite all its failings, is the only potentially effective legal vehicle currently available to secure a modicum of legislative participation in decisions to deploy American forces in battle. In theory appropriations, the power of the purse, is a potent weapon. In practice, however, it has proved a paper tiger as can be witnessed during the Vietnam War. During the period 1965 - 1972, on all appropriations bills concerned with the war, more than 95 per cent voted in favour of the bills, while it was not until May 1973, two months after the United States withdrew its last troops from South Vietnam that the House voted to cut off all funds for combat in Southeast Asia.⁸⁶ One could also draw the conclusion that if Congress was providing the money, it must have supported the war.

The Future.

Options for the Future.

a) the abolition of the Resolution. This movement is led by Senator Goldwater (Rep.Ariz) and argues that the President should not be shackled by legislative restrictions that attempt to restrict foreign policy options. Proponents maintain that the repeal of the War Powers Resolution would avoid the event of a serious and potentially destructive Constitutional crisis that may threaten the nation at a time when decision and speed of action are of the essence. However ineffective the Resolution has proved, it remains one of the few means available to Congress to ensure legislative participation in decisions to deploy American forces in combat,

b) the enactment of new legislation. Several conservative Congressmen such as Senators Dole(Rep.Kan.) and Denton(Rep.Ind.) would prefer to enact new legislation. In April 1986 in the wake of the raid against Libya, an identical Antiterrorism bill was introduced in the House by Joe Barton(Rep. Texas) and Duncan Hunter (Rep. Calif.) and in the Senate by Bob Dole and

Jerimiah Denton(Rep. Ala). This measure required no prior consultation with Congress, extended the reporting period from forty-eight hours to ten days, and removed the sixty day limit on the deployment of troops. Less information would be submitted to Congress, not more. However, if Congress is to have more power, it must also have the information, therefore, the question is how that information can be acquired,

c) the establishment of a permanent consultative body. A group of Democratic Congressmen wish to strengthen the law by establishing a permanent consultative body to which the President can turn in times of crisis. In May 1986 Senators Robert Byrd(Dem.W.Va.), Clairborne Pell(Dem. N.Y.), Sam Nunn(Dem.Geo). and Patrick J. Leahy (Dem.Vt.) introduced S.J.Res.340 that would amend Section 3 of the War Powers Resolution and create a bipartisan body of eighteen members for the purpose of consultation with the executive. It would include the speaker of the House, the president pro tempore of the Senate and the majority and minority leaders of both Houses. However, Congress remains doubtful over the wisdom of establishing a large formal consultative committee, perhaps even an independent committee with its own staff. Theoretical and practical problems may arise from centralising power and responsibility in such a manner in an elected representative body. Since Congress is a representative body, making information available to some members and not to others appears to violate the spirit of member equality, exacerbating the system of inequality inherent in the committee system,

d) return to the Senate version S.2956 which provided for a binding list that defines the permissible circumstances for Presidential deployment of troops,

e) the addition of purse - string restrictions. Veto of the President's deployment by concurrent resolution would at the same time provide for an immediate funding cut off. ⁸⁷

"But it remains", Javits notes, "that the pressure of armed conflict is such that even I found myself willing to compromise, to lean in the direction of the Presidency, by giving either more time or a wider latitude of discretion to Presidential actions than warranted by the specific provisions of the War Powers Resolution".⁸⁸ The President still retains the initiative in military deployments, it is recognised that the fate of the nation rests in his hands.

Chapter 4. Footnotes.

1. Vom Kriege, (Memorial Ed.), 1952, p.888.
2. Max Beloff, The Federalist, Or, The New Constitution, (Oxford, Basil Blackwell, 1948), pp.379 - 380.
3. Ibid. p.111.
4. About ten per cent of international conflicts, 1700 - 1870 were accompanied by a formal declaration of war.
5. The Committee of Detail was established when it was agreed by delegates to refer the proceedings of the Constitutional Convention to a committee of five who should prepare and report a detailed Constitution. The committee that was elected consisted of Rutledge of South Carolina, Randolph of Virginia, Gorham of Massachusetts, Ellsworth of Connecticut and Wilson of Pennsylvania.
6. See Max Farrand, The Records of the Federal Convention, (New Haven, Yale University Press, 1911), Vol.2, p.182
7. For details of the Continental Congress see Max Ferrand, The Framing of the Constitution, (New Haven, Yale University Press, 1913), Appendix 1.
8. For debate see William Conrad Gibbons, "The Origins of the War Power Provision of the Constitution", in Michael Barnhart, Congress and United States Foreign Policy. Controlling the Use of Force in the Nuclear Age, (New York, State University of New York Press, 1987), Chapter 1
9. The U.S. Library of Congress, Congressional Research Service, "The Constitution", 1975, pp.325 - 26.
10. Regarding the Commander-in-Chief, see, Louis Fisher, Constitutional Conflicts Between Congress and the President, (Princeton, New Jersey, Princeton University Press, 1985), pp.284 - 287, David M. Abshire, Foreign Policy Makers: President Vs Congress, The Washington Papers, (London, SAGE Publications, 1979, Chapter II, David Gray Adler, "The Constitution and Presidential Warmaking: The Enduring Debate", Political Science Quarterly, Vol 193, no1, Spring 1988, pp.8 - 10.
11. Max Beloff, The Federalist, Or, The New Constitution, op.cit. p.353.
12. Gubernaculum are emergency or extraordinary powers available to the executive; actions taken for reasons of state were solely within the King's prerogative.
13. Prerogative is the power to act according to discretion for "society's good", without the prescription of law, and sometimes even against it.
14. John Locke, Second Treatise of Government, (Oxford, Blackwell, 1966), Chapter XIV.
15. Around two-thirds were natural born American citizens.
16. Louis Fisher, Constitutional Conflicts Between Congress and the President, op.cit. pp.287 - 292. Several Presidents have invoked a prerogative that has come to be called "executive privilege", a claim based

on the Constitutional separation of powers, to the effect that the executive branch may withhold information from Congress. It was invoked thirty - four times prior to the Nixon Presidency. During Nixon's first term, executive privilege was invoked three times on matters that included military assistance. See Thomas E. Cronin, "A Resurgent Congress and the Imperial Presidency", Political Science Quarterly, Vol.95, no2.

17. Although the naval wars against the Barbary Pirates, and France were during this period.

18. Louis Fisher, Constitutional Conflicts Between Congress and the President, op.cit. p.292

19. Ibid. p.292

20. Public Papers of the Presidents, 1962, at 485.

21. Over two hundred times.

22. Now San Juan del Norte.

23. Durand V. Hollis, in Louis Fisher, Constitutional Conflicts Between Congress and President, op.cit. pp.294 - 5.

24. Ibid. p.296

25. Idem.

26. Congressman Bruce Barton: 'Any national Administration is entitled to one or two emergencies in a term of six years. But an emergency every six weeks means plain bad management'. From, Ibid. p.300.

27. Complete details of rise of Presidential war taken from, Louis Fisher, Constitutional Conflicts Between Congress and the President, op.cit. pp.284 -302.

28. James L. Sundquist, The Decline and Resurgence of Congress, (Washington, Brookings Institution, 1981), p.110

29. Although the appropriate committees had been informed and their opinions noted.

30. The Resolution approved the dispatch of four divisions, but expressed the "sense of the Senate" that in the interests of sound Constitutional processes and of national unity and understanding, Congressional approval should be sought for any future expansion of American commitment.

31. Admiral Radford, Chairman of the Joint Chiefs of Staff, had prepared a plan to enter the war with air and naval power to rescue Dien Bien Phu, but Eisenhower made intervention conditional on the positive support of Congress.

32. From, for example, Zablocki (Wisconsin) and Yates (Illinois).

33. Although there were a greater number of dissenting votes (64:28) than over the Formosa Resolution.

34. When Krushchev challenged the rights of the American, British and French to maintain military forces in the Western part of the city.

35. James L. Sundquist, The Decline and Resurgence of Congress, op.cit. p.118

36. Appendix 1

37. In August 1964 reports announced that North Vietnamese torpedo boats had attacked the destroyer U.S.S. Maddox in the Gulf of Tonkin.

38. Senator Cooper: 'Does the Senator consider that in enacting this resolution we are satisfying that requirement of Article IV of the Southeast Asia Collective Defence Treaty? In other words, are we now giving the President advance authority to take whatever action he may deem necessary respecting South Vietnam and its defence, or with respect to the defence of any other country included in the treaty?

Senator Fulbright: I think that is correct.

Senator Cooper: Then, looking ahead, if the President decided that it was necessary to use such force as could lead into war, we will give that authority by this resolution?

Senator Fulbright: That is the way I would interpret it'.

Taken from Lyndon Baines Johnson, The Vantage Point. Perspectives on the Presidency, 1963 - 1969, (London, Weidenfeld and Nicolson, 1971), pp.118 - 119. Fulbright is yet another example of a political U-turn.

39. Arthur M. Schlesinger, The Imperial Presidency, (Boston, Houghton Mifflin, 1973), p.169. Details of above resolutions from, James L. Sundquist, The Decline and Resurgence of Congress, op.cit. pp.110 - 126

40. For complete details of the legislative history of the War Powers Resolution, see, Pat M. Holt, The War Powers Resolution. The Role of Congress in United States Armed Intervention, American Enterprise Institute, Studies in Foreign Policy, 1987, Chapter 2, Duane Tananbaum, Not For The First Time: Antecedents of the War Powers Resolution, 1945 - 1970, in Michael Barnhart, Congress and United States Foreign Policy. Controlling the Use of Force in the Nuclear Age, (New York, State University of New York Press, 1987), pp.39 - 53, James L. Sundquist, The Decline and Resurgence of Congress, op.cit. pp.238 - 252, Thomas M. Franck and Edward Weisband, Foreign Policy by Congress, op.cit. pp.61 - 71, Robert D. Clark, Andrew M. Egeland Jr and David Sanford, The War Powers Resolution, A National War College Strategic Study, National Defence University, Washington D.C. 1985, pp.1 - 4, Jacob K. Javits, "The Debate Over The War Powers Resolution", Michael Barnhart, Congress and United States Foreign Policy. Controlling the use of Force in the Nuclear Age, op.cit. pp.55 - 58, Louis Fisher, Constitutional Conflicts Between Congress and the President, op.cit. pp.307 - 310.

For the text of the War Powers Resolution see Appendix 2

41. Barbara Hinkson Craig, "The Power to Make War: Congress' Search for an Effective Role", Journal of Policy Analysis and Management, Vol.1, no.3, spring 1982, p.320

42. The fact that the Resolution only became law over the President's veto destroyed one of the objectives of its principal sponsors, Senator Jacob Javits, (R. N.Y.). It had been Javits' hope that Congress would devise a 'methodology', as he called it, for joint Presidential - Congressional action in sending American troops into combat, that the President would sign it, and that the resulting law would then represent a compact between Congress and the President for making the Constitution work in that 'grey

area'. See, Pat M.Holt, The War Powers Resolution. The Role of Congress in United States Armed Intervention, op.cit. pp.1 - 2.

43. For further details, see, Thomas M. Franck and Edward Weisband, Foreign Policy by Congress, (Oxford, Oxford University Press, 1979), p.68.

44. Max Beloff, The Federalist, Or, The New Constitution, (Oxford, Basil Blackwell, 1948), p.111.

45. Barbara Hinkson Craig, "The Power To Make War: Congress' Search for an Effective Role", op.cit. p.324.

46. Section 3, "The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such hostilities".

47. For details regarding the evacuation of refugees from Cyprus, see, Robert F.Turner, The War Powers Resolution: Its Implementation in Theory and Practice, (Philadelphia, Foreign Policy Research Institute, 1983), pp.47 - 48

48. Thomas M. Franck and Edward Weisband, Foreign Policy by Congress, op.cit. p. Regarding the evacuations from Indochina, see, Pat M.Holt, The War Powers Resolution. The Role of Congress in United States Armed Intervention, op.cit. pp.12 - 16, Robert F. Turner, The War Powers Resolution: Its Implementation in Theory and Practice, op.cit. pp.48 - 59, Christopher H.Pyle and Richard M.Pious, The President, Congress and the Constitution. Power and Legitimacy in American Politics, (New York, Free Press, 1984), pp.367 - 368

49. Section 4(a), "In the absence of a declaration of war, in any case in which the United States Armed Forces are introduced - (1) into hostilities or situations where imminent involvement in hostilities is clearly indicated by the circumstances".

50. Section 3, see footnote 46.

51. Regarding the Mayaguez incident, see, Pat M.Holt, The War Powers Resolution. The Role of Congress in United States Armed Intervention, op.cit. pp.16 - 19, Robert F. Turner, The War Powers Resolution: Its Implementation in Theory and Practice, op.cit. pp.59 - 64, Robert D. Clark, Andrew M Egeland Jnr and David Sanford, The War Powers Resolution, op.cit. pp.21 - 24,

52. Robert F.Turner, The War Powers Resolution: Its Implementation in Theory and Practice, op.cit. p.65. Richard J. Stoll, in "The Sound of Guns. Is There Really A Congressional Rally Effect After United States Military Intervention?" examined whether during the period, 1946 - 1982, Presidents achieved more success in Congress on important international issues in the wake of dramatic operations. The Analysis shows that, at least for a short period after clear use of United States military force, a President will generally have a greater degree of Congressional support on key international issues. Richard J. Stoll, "The Sound of Guns. Is There Really A Congressional Rally Effect After United States Military Action?", American Politics Quarterly, 1987. Regarding the evacuations from Lebanon, see,

Ibid. pp.65, Pat M.Holt, The War Powers Resolution. The Role of Congress in United States Intervention, op.cit. pp.19 - 20,

53. Regarding Zaire, see, Robert F. Turner, The War Powers Resolution: Its Implementation in Theory and Practice, op.cit. p.65, Robert D. Sanford, Andrew M. Egeland Jnr and David Sanford, The War Powers Resolution, op.cit. pp.24 - 25

54. Section 8(d), "Nothing in this joint resolution - (1) is intended to alter the Constitutional authority of the Congress or of the President, or the provisions of existing treaties"...

55. Regarding the Iran Rescue Attempt, see, Robert F. Turner, The War Powers Resolution: Its Implementation in Theory and Practice, op.cit. p.69, Robert D. Clark, Andrew M. Egeland Jnr and David Sanford, The War Powers Resolution, op.cit. pp.25 - 27,

56. Section 8(a), "Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred - (1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorises the introduction of United States Armed Forces into hostilities or into situations and states that it is intended to constitute specific statutory authority within the meaning of the joint resolution"...

57. Regarding El Salvador, see, Robert F. Turner, The War Powers Resolution: Its Implementation in Theory and Practice, op.cit. p.73, Robert D. Sanford, Andrew M. Egeland and David Sanford, The War Powers Resolution, op.cit. pp.27 - 28.

58. Section 4(a), In the absence of a declaration of war, in any case in which the United States Armed Forces are introduced - (2) into the territory, airspace of waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces"...

59. Regarding Sinai, see, Robert F. Turner, The War Powers Resolution: Its Implementation in Theory and Practice, op.cit. p.80.

60. Section 4(a)(1), see footnote 50.

61. Appendix 3

62. Section 4(a)(1), see footnote 50.

63. Section 5(b), "Within sixty calendar days after a report is submitted or is required to be submitted pursuant to Section 4(a)(1), which ever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) had declared war or enacted a specific authorisation for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about removal of such forces"...

64. Regarding Lebanon, see, Robert F. Turner, The War Powers Resolution: Its Implementation in Theory and Practice, op.cit. p.81, Robert D. Clark, Andrew M. Egeland Jnr and David Sanford, The War Powers Resolution, op.cit. pp28 - 31.

65. Section 4(a)(1), see footnote 50.

66. Section 5(b), see footnote 65.

67. Michael Rubner, "The Reagan Administration, the 1973 War Powers Resolution and the invasion of Grenada", Political Science Quarterly, Vol.100, no.1, Winter 1985 - '86, p.645. Regarding Grenada, see, Ibid. and Robert D. Clark, Andrew M. Sanford Jnr and David Sanford, The War Powers Resolution, op.cit. pp.35 - 37

68. Section 3, see footnote 51.

69. Representative Dante B. Fascell and Senator Sam Nunn

70. Michael Rubner, "Antiterrorism and the Withering of the 1973 War Powers Resolution", op.cit. p.203. Regarding 'Operation Prairie Fire', see, Michael Rubner, "Antiterrorism and the Withering of the 1973 War Powers Resolution", Political Science Quarterly, Vol.102, no.2, Summer 1987, Russell Watson, "Kaddafi's Crusade", Newsweek, April 7, 1986, pp.20 - 24.

71. For general details regarding case studies and Presidential compliance, see, Jacob K. Javits, "War Powers Reconsidered", Foreign Affairs, no.64, Fall, 1985, pp.134 - 138, Thomas M. Franck and Edward Weisband, Foreign Policy by Congress, op.cit. pp.71-76, John Sullivan, "The Impact of the War Powers Resolution", Michael Barnhart, Congress and United States Foreign Policy. Controlling the Use of Force in the Nuclear Age, op.cit. pp.68 - 70, Louis Fisher, Constitutional Conflicts Between Congress and President, op.cit. pp.314 - 318, James L. Sundquist, The Decline and Resurgence of Congress, op.cit. pp.261 - 265, Daniel Paul Franklin, "War Powers in the Modern Context", Congress and President, Vol.14, Part 1, 1987, pp.79 - 82

72. Chadha, 103 S.Ct. 2764, 1983. For further details see footnote 87.

73. For a general assessment of War Powers Resolution, see Michael J. Glennon, "The War Powers Resolution Ten Years Later: More Politics Than Law", American Journal of International Law, Vol.78, no.3, 1984, p.571, Christopher H. Pyle and Richard M. Pious, The President, Congress and the Constitution. Power and Legitimacy in American Politics, op.cit. pp. , John Sullivan, "The Impact of the War Powers Resolution", op.cit. for details regarding, the resolution as symbol, mechanism and restraint, James L. Sundquist, The Decline and Resurgence of Congress, op.cit. pp.265, Louis Fisher, Constitutional Conflict Between Congress and the President, op.cit.

74. Former National Security Council Staffer, Dr John F. Lehman, quoted in Robert F. Turner, The War Powers Resolution: Its Implementation in Theory and Practice, op.cit. p.124.

75. Graham T. Allison, "Making War: The President and Congress", Law and Contemporary Problems, Vol.40, no.3. Regarding consultation, see, Daniel Paul Franklin, "War Powers in the Modern Context". op.cit. pp.84 - 85. Pat

M.Holt, The War Powers Resolution. The Role of Congress in United States Armed Intervention, op.cit. pp.25 -26, Christopher H. Pyle and Richard M. Pious, The President, Congress and the Constitution. Power and Legitimacy in American Politics, op.cit. p.369.

76. Section 4(a)(2), see footnote 60.

77. Section 4(a), "In the absence of a declaration of war, in any case in which the United States Armed Forces are introduced - (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;
the President shall submit within 48 hours to the Speaker of the House of representatives and to the President pro tempore of the Senate a report, in writing ,setting forth -

(A)the circumstances necessitating the introduction of United States Armed Forces;

(B)the Constitutional and legislative authority under which such introduction took place; and

(C)the estimated scope and duration of the hostilities or involvement.

78. Barbara Hinkson Craig, "The Power to Make War: Congress' Search for an Effective Role", op.cit. p.324

79. Section 4, see Appendix 2. Regarding reporting, see, Pat M. Holt, The War Powers Resolution. The Role of Congress in United States Armed Intervention,op.cit. p.26 -28, Daniel Paul Franklin, "War Powers in the Modern Context", op.cit. pp.85 - 86, Christopher H. Pyle and Richard M. Pious, The President, Congress and The Constitution. Power and Legitimacy in American Politics, op.cit.

80. Regarding termination, see, Daniel Paul Franklin, "War Powers in the Modern U.S.Context", op.cit. pp.86 - 87,

81. Graham T. Allison, "Making War: The President and Congress", op.cit. p.103. For details, see, Ibid. pp. 100 - 103, see also Robert F. Turner, The War Powers Resolution: Its Implementation in Theory and Practice, op.cit. pp.112 - 114.

82. Quoted in Ibid. p.109

83. Section 5(b), "Notwithstanding subsection (b), at any time that the United States Armed Forces are engaged in hostilities outside the territory without a declaration of war or specific statutory authorisation, such forces shall be removed by the President if the Congress so directs by concurrent resolution"...

84. Section 5(c), see footnote 85.

85. In the Immigration and Naturalisation Service V. Chadha, adherence to the requirements of the Presentation Clause of the Constitution was found by the Court to be required in any instance in which the legislative action has the 'purpose and effect of altering the legal rights, duties and relations of persons including the...Executive Branch...outside the legislative branch'. The adoption of a concurrent resolution under Section 5(c) would have the purpose and effect of altering the rights and duties of the President. See Michael J. Glennon, "The War Powers Resolution Ten Years Later: More Politics Than Law", American Journal of International Law, Vol.78, no.3, July 1984, p.577. Regarding Constitutionality see, Thomas M. Franck and Edward Weisband, Foreign Policy by Congress, op.cit. pp76 - 82,

Robert D. Clark, Andrew M. Egeland Jnr and David Sanford, The War Powers Resolution, op.cit. pp.9 -18, Robert F. Turner, The War Powers Resolution: Its Implementation in Theory and Practice, op.cit. p.107 - 108.

86. Godfrey Hodgson, All Things to All Men. The False Promise of the American Presidency, (London, Weidenfeld and Nicolson, 1980), p.149

87. For details see Michael Rubner, "Antiterrorism and the Withering of the War Powers Resolution", op.cit. pp.211 - 215. For future predictions, see Daniel Paul Franklin, "War Powers in the Modern Context", op.cit., Graham T. Allison, "Making War: The President and Congress", op.cit. and Barbara Hinkson Craig, "The Power to Make War: Congress' Search for an Effective Role", op.cit. pp.326 - 327

88. Jacob K. Javits, "War Powers Reconsidered", Foreign Affairs, Vol.64,no.1 Fall 1985, p.137.

Chapter 5: The Endemic Weakness of Congress.

"All Politics is Local", Tip O'Neill.¹

Over thirty years ago the architect of the Legislative Reorganisation Act of 1946, Galloway, wrote, "Congress lacks adequate information and inspection facilities. It is a body without a head. Leadership is scattered among chairmen of eighty-one little legislatures who compete with each other for jurisdiction and power. Its supervision of executive performance is superficial. Much of its time is consumed by petty, local and private matters which divert its attention from national policy - making. Elected by the people to protect public interest, it yields too often to importunities of lobbyists for special interest groups. It lacks the machinery for the development of coherent legislative programmes, and for promoting party responsibility and accountability. Its posts of power are held on the basis of political age, regardless of ability or agreement with party policies. And its members are overworked and underpaid".²

Since Galloway wrote, Congress has been transformed:

- a) Congress has acquired considerable staff and information processing services,
- b) increased oversight of the Executive,
- c) increased professionalism,
- d) seniority is no longer a guarantee of committee power,
- e) improvements have been made in the system of committees.

However, it remains a peculiar institution: the electoral connections and interests of the members are highly personal and localised; the contemporary Congress is a decentralised body, characterised by autonomous, independent committees; parochialism is inherent to the body; the party

leadership is relatively weak, the internal power structure is highly dispersed; it fights fiercely for its independence; there is the problem of distraction, and of irresponsibility..."In short", notes King, "Congress is an unusually democratic legislative institution".³

The Re-election Imperative.

Unlike the majority of Parliamentary systems, the House is elected by Congressional district and the Senate by states. Representatives face constant re-election battles, compelling legislators to focus more and more attention to local concerns. It can almost be argued that the re-election drive begins the day after the previous contest ends.⁴

Members of the House are authorised twenty-six trips back to their districts at the government's expense every year, but most members feel it necessary to return home every weekend. Senators are authorised forty trips home. While Senators may believe that they can afford to pay less attention to their constituents because they are accountable to the electorate only once every six years, compared to the whole of the House being elected every two years. Senators are increasingly vulnerable to the promise of better constituency service from challengers. For example, Senator Dick Clark, (Dem, Ia) concentrated on African politics as the chairman of the African Affairs Subcommittee of the Foreign Relations Committee. He made relatively few trips back home and lost the fight for re-election to George McGovern, (Dem.S.D.)who himself faced a difficult re-election fight in 1980 : his opponent charged him with being more concerned with international issues. Former Representative, Frank Smith, (Dem, Miss), stated, "All members have a primary interest in being re-elected. Some members have no other interest". The difficulties of serving on a foreign policy committee were evident in the 1980 Senate elections: Four out of five members of the Foreign Relations Committee who were seeking re-election were defeated.⁵

Representation produces individualism and parochialism , fragmentation and dispersion of authority. It destroys the capability of Congress to integrate policy, to lead and to govern. Parochialism produces irresponsibility and undermines the will to govern.⁶

Parochialism.

Close attention to constituency interest certainly enhances the chance of re-election, but it also reinforces parochialism in Congressional decision - making.⁷ The weak electoral system and weak parties reinforce localism in American politics. It is virtually impossible to conduct a coherent national foreign policy if all decision makers do not see the stakes in the same way.

Distraction.

The volume and diversity of constituent demands are so urgent and unrelenting as to lead members to focus on the role of representation, to concentrate on local and peripheral issues and avoid broader responsibility. A 1977 study found that half of the members of the House felt that constituency demands interfered with the proper exercise of their legislative duties. One Congressman noted, "Too much of our time and energy is diverted in that direction with the result that the opportunity for creative thinking in a legislative way is greatly lessened. It is too bad we don't have two members of Congress for each district, with one having the responsibility for handling constituency requests".⁸ Members must remain locally oriented throughout their careers in the pursuit of re-election. However, this is largely where their interests lie. A 1971 study of seventy-seven House members found that the majority derived greatest satisfaction from their representative role.⁹

"In short", contends Sundquist, "whether a member finds constituent service the most or least satisfying element of the job, none can escape its demands. If they let themselves, members can become wholly absorbed in the errand running, in lobbying and case work, in garnering federal projects for their states or districts, and in returning home at frequent intervals to speak, listen and be seen. Yet if they pay too little attention to that aspect of their jobs, that can bring a quick end to their political careers. Neglect is an issue political opponents are quick to seize on, and one constituents can understand".¹⁰

Irresponsibility.

Critics often charge that the majority of Congress is unwilling to run the risk of serious commitment to policy - making; that they prefer to concern themselves with local matters. They are dependent upon the President for the initiative to set the legislative workload, preferring to respond rather than propose. The tendency is to avoid risk, to defer to the executive branch rather than stand up for their own preferences. As such, they have placed themselves in a position of self - protection, where they can take credit for successes and avoid blame for any failure. When things go wrong, it is the executive who is held responsible; Congress can easily escape blame.¹¹ As the influences which go to make legislation are so diverse, there can be no clear allocation of blame. Mayhew writes, "on matters where credit - claiming possibilities wear thin, members display only a modest interest in what goes into bills or what their passage accomplishes".¹²

Re-election, however, is not the sole concern of Congressmen. Also of import are: seeking influence within the House or Senate, making good public policy, and a career in politics beyond the House or Senate. Sundquist

notes, "a body made up of individuals looking out for themselves cannot, as a collectivity, act responsibly. It cannot govern. Individuals do not conceive, adopt, and enact coherent programmes".¹³

Committees: Centres of Congressional Power.

Congressional government is subcommittee government.¹⁴ Subcommittee government lies close to the heart of the contemporary Congress. To a large extent, any legislative policies originate in committee/subcommittee government. However, the decentralisation, which is a strength when government policy makers want new ideas and responsiveness, also makes coordination and, therefore, initiation, of policy difficult. Congress is a collection of power centres, many of which are rivals.

Congressional government by subcommittee is also parochial government. In Congress, committees are organised largely on the basis of constituency interests. These committees attract members from the districts most directly affected by their main subjects. Membership on a committee which appears most relevant to one's district can be most advantageous in re-election drives. Thus, many Congressional workgroups are not microcosms of the parent houses, but are biased one way or another.¹⁵

Jurisdictions are not always clear - cut, and the potential for obstructing the progress of a major bill is great. Bills take long and complex paths, involving at least one committee and one subcommittee in both the House and Senate.

In 1974, the House changed its procedures to allow for greater participation in its decision - making by junior members. The rationale behind this was to increase participation by all House members in legislation and the change in the referral procedure enabled more actors to get involved in the passage of each bill. Prior to 1974, a bill was filed by a member and then the clerk of the House, acting through the Speaker would

assign it to a committee. However, the reform of 1974¹⁶ now allowed for several different types of bill referral: a) a joint referral permitted several committees to consider a bill simultaneously, b) a sequential referral allowed several committees to consider a bill in sequence, c) a split referral was when the Speaker split a bill into different components and assigned them to different committees. Post 1974, as long as the jurisdiction determined by House rules gives the committee a legitimate claim on the subject matter of the bill, the Speaker can hardly dismiss a call for consideration. Jurisdictional politics is an inherent feature of contemporary Congressional policy making; to hold jurisdiction means to hold a piece of the action.¹⁷

The greater use of multiple referral procedures in the House and Senate, and the increased emphasis on re-election have served to weaken Congressional initiatives in policy - making. The 1885 measures which were the subject of multiple referrals in the House in the 95th Congress, (1977 - '78), accounted for twenty per cent of all committee business in the House. Such legislation is only half as likely to be reported from committee in contrast to bills singly referred.¹⁸ They also take up more time and there is a greater likelihood of amendment on the floor.

Referral procedures add yet further delays to the Congressional process, and it is especially problematic as the more actors who become involved in foreign policy, the less decisively and quickly the nation can act. In the international system, the imperative is speed of action.

A further delay to Congressional decision-making is the absence of any committee similar to the House Rules Committee in the Senate. In the Senate debate may continue at length on virtually any subject. The lack of strict procedure limiting amendments in the Senate means that a foreign policy issue may be attached as a "rider"¹⁹ to any piece of legislation. Also, as almost any proposal entails the expenditure of money, jurisdictional boundaries are yet further obscured and thus prone to constant delay. The

problem is compounded when in 1971, reform greatly eased the requirements for roll call votes. Now the concern is for maximum possible participation; members often ignorant of the details of the bills on which they are voting.

Congress, Information and Foreign Policy.

The Absence of an Integrated Information System.

Congress does not have a single foreign policy information system, but rather each member's office and relevant committee staff develop and maintain its own system. Power in Congress derives from individual members rather than from the body as a whole. The individual member, as a source of power in the system, organizes and shapes the flow of information through his/her own office. The extent of the flow of information on foreign policy can be extensive or negligible, depending on the member's committee responsibilities, constituency concerns and personal interests. The sources, focus, perspective and policy preferences reflected in that flow vary dramatically from office to office.²⁰

Common Information Resources Available to Congressional Offices.

There are four support agencies that serve the informational and analytical needs of Congress:

(a) General Accounting Office (G.A.O.) has an annual budget of \$300 million plus, and a staff in excess of 5000. It is the investigative arm of Congress and will respond to requests for information and analysis on how the executive branch is implementing its legislative mandates, especially whether it is spending the money appropriated by Congress.

Most of its staff are in Washington, although the G.A.O. also maintains offices in fourteen cities, and sublocations in a further twenty-five cities, and branches responsible for the oversight of European activities. It is especially valuable when an office has a continual and substantial interest in a certain issue, and in recent years the G.A.O. has diversified and become particularly involved in defence spending. Its reports are thorough and detailed.

However, the G.A.O.'s foreign policy related activities are in practice limited by the relatively small amount of federal budget allocated to foreign policy matters.

(b) Congressional Research Service (C.R.S.) has an annual budget of around \$40 million and a staff of 840. Its task is that of providing general research and information support to Congress. In the realm of foreign policy, the C.R.S. draws on a seven person reference team which answers basic requests. In addition, approximately thirty foreign affairs subject area specialists respond to individual requests for research and analysis. The C.R.S. is probably best known for its ability to deliver basic information and analysis of immediate legislative activities very quickly.

(c) Congressional Budget Office (C.B.O.) has a budget of around \$17.25 million and a staff of about two hundred. It was created primarily to serve the budget committees which were a product of the Congressional Budget and Impoundment Act of 1974.

(d) Office of Technology Assessment (O.T.A.), with a budget of \$15.5 million per annum and a staff of about 140, assesses policy implications of scientific, technical and global trends. Relying largely on external contractors, the O.T.A. develops longer term studies that are extensively

researched and reviewed. Recent efforts in the foreign policy field have focused on trade and technology transfer.²¹

However, Heginbotham suggests that it is a mistake to expect a single integrated information system to provide Congress with the kind of information that the executive branch needs to manage foreign policy. Congress is an aggregate of large numbers of independent power centres, each of which develops its own distinctive information systems. The information needs in Congress are targeted on the specific challenges to executive branch policies, programmes and budgets that individuals and coalitions of members choose to mount.²²

Members' Roles in Subcommittee Government.

Congressional workgroups are seen by legislators as helping in attaining personal and career goals. They increase a legislator's re-election chances, enable him to shape public policy, and enable him to exert some influence.²³

Multiplicity of Assignments.

In the 96th Congress, 1979 -'80, there were 113 standing committees and subcommittees in the Senate and 170 in the House. The average Senator held about ten seats on standing workgroups; the average Representative 5.5. Leadership posts are also numerous: in the 96th Congress all but two Democratic Representatives chaired a committee or subcommittee. With so many assignments, members are overextended and hard pressed to manage their crowded schedules. Scheduling problems are endemic, with committee quorums difficult to achieve and members' attention focused elsewhere. Sundquist contends that a body made up of individuals looking out for themselves cannot, as a collectivity, act responsibly. It cannot govern. Individuals do

not conceive, adopt, and enact coherent programmes.²⁴ But what of the increased staff facilities?

The Role of Congressional Staff: Has the Staff Explosion Helped or Hindered Congress?

"To a large degree, subcommittee government is staff government. The modern Capitol Hill bureaucracy betrays the character of Congress as a decentralised, nonhierarchical institution. It is not one bureaucracy but many, clustered about centres of power and in some sense defining those centres".²⁵

Members are able to follow more issues than they could if they had to attend all the meetings personally. As a result, both members as individuals and Congress as a whole are better able to manage a heavier workload than would be possible without these staffs.²⁶

Staffs are also expected to go out and drum up new business. The increased use of personalised, entrepreneurial staffs has helped Congress retain its position as the key initiator of federal policy. Congress is less passive today, thanks largely to its increased staff. The system of individualised staff control seems also to be responsible for much of the oversight.

However, there are negative aspects, including the effect of staffs on Congress' ability to act as a deliberative body. Congress, as is made evident in Federalist 52, was intended to serve as a substitute for direct meetings of citizens. Representation, it was envisaged, was likely to produce a more manageable process than direct democracy, and better results. Indirect communication, such as the American Congress has today was not what was envisaged, for direct communication among elected members was considered essential to informed deliberation. While indirect communication can convey a great deal of information, it cannot help a Congressman feel or sense his colleagues' reactions to his own or each other's arguments. Debate and

discussion have lost their central place in the legislative process. The number of Congressional staffers may have increased four fold but the staffers actually increase the legislative workload because members of Congress must supervise the staffs and pay attention to staff business and initiatives. Gradually the staffs take responsibility for much of the committee business, especially oversight, and thus legislators find themselves less prepared.

For a process of legislative deliberation to function well, there are three distinct requirements: accurate information, time, and communication. The reliance on staff undercuts each of these requirements. In the first instance, the majority of information reaching members may well be reliable, but it would take an expert to sort out the reliable from the unreliable, and even an expert cannot know what material has been withheld to serve a staff's or chairman's own interests. Secondly, the use of staff has not left members more time to concentrate on their legislative work. If anything, the use of entrepreneurial staffs has meant an increase for members of hearings and amendments considered every year. Thirdly, the use of staff negotiations as a substitute for direct conversation and deliberation among members has led to an increase in indirect negotiation and a decline in direct deliberation. Staffers tend to interact with each other in an effort to produce consensus.

The impetus of staff is to build coalitions by having programmes to respond to more demands, rather than let them die a natural death. The result is an increasingly inclusive and complex legislature that can only be understood by an expert. In turn, this increases the power of permanent Washingtonians with this necessary expertise.²⁷

The New Congress: The Impact of Reform: A Brief Synopsis.

In the 1970's committee government gave way to subcommittee dominance. A series of reforms in the 1971 -'75 period radically altered the way in which the House conducted its business. The primary thrust of the reforms was organisational and procedural [with policy change as the ultimate goal]. However, a second focus was to shift policy not indirectly through structural reform, but directly through legislative changes in the programmes and executive branch activity, such as the series of legislative prohibitions which included the War Powers Resolution. This shift occurred primarily in foreign policy matters. It constituted a revolution and in conjunction with internal reforms of the institution brought about profound and permanent change in Congress' position in the formulation of foreign policy.

Committee chairmen were no longer automatically selected by the seniority principle, the length of continual service on a committee.²⁸ Democratic party members were no longer to be assigned to positions by the Ways and Means Committee. Instead, a party organisation, the Steering and Policy Committee, one third of whose members were appointed by the Speaker, controlled appointments to the committee and the naming of chairmen. The Democratic caucus, composed of all party members of the House, then vote upon the recommendations of the Steering and Policy, with agreement not assured.

In 1974 appropriations also fell prey to party leadership when appropriations subcommittee chairmen were to be appointed by Steering and Policy, subject to caucus approval. A further reform of even greater importance was the creation in both the House and Senate of Budget committees which were designed to rationalise the relationship between spending and revenue raising.

The biggest block of reforms occurred in 1973 when the selection of subcommittee members was made the responsibility of the full committee caucus and could not be dominated by committee chairmen; subcommittees were also granted fixed jurisdictions, so that full committee chairmen could not create new subcommittees at will to reward friends and punish enemies. Committee members were also guaranteed their choice, based upon seniority, of subcommittee assignments, and subcommittees were forced to have ratios of party members which reflected full committee party balances, so that conservative chairmen could not stack certain subcommittees with Republicans and overbalance other less powerful ones with liberal Democrats.

In 1974 it was also mandated that committees with more than twenty members but no subcommittees would have to establish at least four such bodies to ensure complete investigation. Committees were also required to establish an oversight subcommittee to examine the overall affairs of the committee. Members would be restricted to membership on two subcommittees in each full committee on which they serve.

While the reforms of the 1970s could have produced either a more centralised or a more decentralised Congress, the weakness of the party system and the reluctance of members to subordinate their newly - liberated subcommittees to party leadership tilted the balance strongly in favour of factionalised allegiances. The upshot of the greater participation resulting from the reforms has led to a situation in which the only real power is the ability to block legislation.

The reforms energised Congress and also transformed the body from a closed to a very open system. Power and resources were expanded and spread out so that it was no longer necessary to "go along to get along". An incoming freshman now has the automatic ability to hire up to twenty-two staff, with a staff budget of a third of a million dollars. However, it is now more difficult to obtain consensus within committees, and there is greater opportunity for individuals to overrule committee positions on the floor.

Thus, the ability of party leaders and their senior colleagues to influence rank and file membership has diminished enormously. Open voting, open mark-ups, open conference committees and the dramatic increase in the media presence²⁹ have all widened the scope for involvement for members. However, the major reason as to why party leadership has failed to impose itself after reforms is "democracy". In the third volume of *The American Commonwealth*, Lord Bryce wrote, "perhaps no form of government needs great leaders as much as democracy".³⁰

The Increased Muscle of Pressure Groups

The Vietnam War brought with it the development of a large anti-war political movement that developed from the mid 1960s to the 1970s. This movement trained a large number of people in the techniques of political organisation and pressure. From the late 1960s to the mid 1970s, there was an explosion of "public interest" groups in Washington, made possible by the decentralisation, democratising and opening reforms of Congress. There are many points of access in the system for interest groups, and it is possible for groups to form and persist with limited resources. Well financed and organised lobbying has expanded.³¹ As these groups formed and demonstrated their impact on the policy process and policy outcomes, they bred counter lobbyists in reaction, and also brought about greater sensitivity amongst all interest groups to the power of Congress, the new accessibility and the need to protect or advance their group interests on Capitol Hill.

The expansion of interest groups is not confined to domestic policy. In foreign policy, there was good reason to increase efforts to influence Congress as a whole because both Houses were getting much more involved in the foreign policy process. Increased foreign lobbying by foreign states, ethnic groups and ideological and commercial organisations, promoted the desire by Congress to get involved in foreign policy questions and provided

a powerful incentive for members who might otherwise be reluctant to take on the President.

All these changes occurred within a context of a rapidly changing membership inside both the House and Senate. The 1970s witnessed rapid turnover in Congress. Around three quarters of members had been newly elected to the institution since Nixon's ascendancy to the White House.³²

The Inherent Weakness of Congress in Foreign Policy.

One of the major Congressional problems in dealing with foreign policy matters stems from the attitudes that many Congressmen have developed. Deference to, and disrespect for the executive branch, periodic disinterest in foreign policy matters, lack of sustained interest in any particular issue, parochial motivations due to the pressure from constituent interest groups, and a reluctance to take responsibility are all major problems which no amount of structural reform can remedy.

Congress tends to handle foreign policy as it handles domestic policy. Too often it asks what the politics are, not what the national interest is. Its members tend to focus on one aspect of a problem and to let judgment on that aspect determine broad policy on a complex issue. Congress is not good at keeping secrets; often confidentiality is viewed as deception.

The Problem of Leadership.

Spanier and Noguee contend, "never in American history has the problem of leadership been so linked with the security and well-being of the nation; and rarely have the circumstances of domestic life made the creation of that leadership more difficult to obtain".³³ Congress reflects the fragmentation of American political life. The difficulty with the legislative process is

that there is no one place in the institution where foreign policies are aggregated and formulated. Every piece of legislation is examined independently in committee and acted upon in relative isolation from other related bills.

Incapacity To Act Quickly.

In the legislative process, speed is always at odds with deliberation. The Constitution sets the legislature free to develop its capacity for deliberation by locating the capability for swift action elsewhere - namely in a powerful executive outside the legislative branch. Hamilton wrote in Federalist 70, "decision, activity, secrecy and dispatch will characterise the proceedings of one man in a much more eminent degree than the proceedings of any greater number"³⁴. Thus, with the President at hand to act when speed was required, Congress developed the alternative virtue of deliberation. It became a forum for reconciling the divergent opinions of the nation's diverse and distant regions. Sundquist argues, "from the beginning, Congress has shown that its most deep-seated fear is not of obstruction but of quick majoritarian decisions, and its structures and procedures have evolved accordingly".³⁵ Committees and later subcommittees were created for the thorough consideration of legislation, each with the right to proceed with virtual autonomy at its own pace. The Senate adopted the rule of unlimited debate.³⁶ Thus, the inability of Congress to act quickly virtually compels Congress to delegate its powers. Foreign affairs is the pre-eminent area in which the government must be capable of instant and resolute responses.

Between the wars Congress experimented with the Neutrality Acts, with the notion that it could prescribe in advance the course of action to be pursued by the government in any crisis that might arise. The experiment was doomed

to failure. The tragedy of the Second World War demonstrated that a flexible stance was vital to foreign policy.

The Formosa, Middle East, Cuba and Tonkin Gulf Resolutions were all concessions, which recognised that in the modern era Congress cannot debate how to respond to ultimatums, or when to issue them.³⁷ As a result Sundquist writes, "Congress has admitted the endemic weakness of its own capacity. Whenever it has recognised the necessity for speed of action, it has responded by building up the Presidency".³⁸

Paralysis.

In recent years, free-standing foreign affairs bills have not been enacted. Instead, they have faced almost insurmountable obstacles, including those general obstacles faced by all legislation, and by those more specific barriers relating directly to the fact that foreign policy questions are now among the most controversial facing Congress. In general, Congressional circuits are overloaded and the diffusion of power and the decentralisation of the committee structure are too pervasive. Drishler writes, "it is now fair to say that Congress only gets done what it cannot otherwise avoid".³⁹ Paralysis has the effect of sharply curtailing the ability of foreign affairs and appropriations committees to produce free-standing legislation, and it has virtually made continual resolutions and supplemental appropriations the only viable means for affecting foreign policy.⁴⁰

Inability To Plan.

The decentralisation and fragmentation of power within the legislative body thwart Congress' ability to plan. The incapacity to plan is a symptom of the two - chamber system, and especially the committee system. The

specialised committees by their very nature are designed to have a narrow focus. The problem is compounded by the committees' division of their concerns into the still narrower confines of the subcommittees. These specialised bodies cannot be the source of one grand strategy. The problem is exacerbated by the lack of one centralising institution.

The Stop and Go Nature of Congress. Relentless Debate Instead of Swift Action and Sudden Lurches Instead of Steady Policies

The Boland Amendment

In 1985 Congress repealed the ten year old Clark Amendment prohibiting aid to the Angolan resistance. Yet it took this step at exactly the same time it was denying aid to anti communist resistance in Nicaragua. Five different Boland Amendments on aid to the Nicaraguan resistance passed Congress between 1982 - 1986. What each of those Amendments intended was never completely clear. Initially, there was significant support for aiding Nicaraguan resistance; in fact, before voting on the Boland Amendment, the House actually voted down an Amendment that categorically cut off aid to the Contras. The Boland Amendment then passed unanimously 411 -0, making it at least, far more difficult to aid the Contras.⁴¹

The October Debate on the President's Persian Gulf Policy.

In a day long discussion that featured first the defeat and then the passage of a resolution on the Gulf, the Senate proved how difficult it can be to forge coherent policy from divergent Congressional points of view. In the first two votes, the resolution was defeated, 47:51; within hours, the Senate reversed this vote, 54:44. Senator Pryor noted, 'In the final analysis, I don't know what we're doing'. The resolution that finally passed

did nothing more than schedule the Senate to vote again several months later.⁴²

House as distinct from Senate.

Institutional friction and rivalry is not limited to the President and Congress, but also extends to the two Houses of Congress: the House of Representatives and the Senate. To find evidence of a bicameral policy making body one must go back to the eighteenth century, to the Joint Committee of Fifteen on Reconstruction. This century the trend has been toward decentralisation of power even within the individual Houses, firstly as Congressional acceptance of Presidential leadership made centralisation seem unnecessary, and in the 1970s as the committee system promoted diffuseness to guard over an Imperial Presidency.

The House because of its historic and Constitutional lesser role in the conduct of foreign affairs has on occasion tried to upset what the Senate has achieved, for example, regarding the Panama Canal Treaties; or as in the case of the Zimbabwe - Rhodesia negotiations, the House and especially its Foreign Affairs Committee⁴³ came to the rescue of the President and saved him from the Senate's attempt to undermine Presidential policy. Similar friction arose during the Vietnam War when repeated Senate resolutions opposing the war died in the House. Thus, Congress is by no means a unified body, and there are yet further divergences between the two Houses.

During the Eisenhower, Nixon and Ford Presidencies, Presidential meetings with Congressional majority leaders were limited in scope if they ever took place at all. Policy differences between the two Houses were negotiated in an ad hoc manner, by conference committees appointed separately for each piece of legislation. Congress did not develop any joint means for integrating policy. Rivalry is inherent between the two Houses of Congress.

Whereas the Senate is widely exposed to public acclaim and attention, the House, because of its size and complexity confuses the casual onlooker, and hence its members are relatively enclosed and insulated. Senate debate is long and voluminous. It draws and holds the attention of the media and public opinion makers. In contrast, House debate is comparatively short, pointed and often technical. Senators are famous, recognised men, some of whom use their office as a springboard for their Presidential ambitions. House members, other than the Speaker, are largely anonymous - there are just too many of them. And the sheer number of Representatives has compelled the rise of customary ways of doing business⁴⁴, which are often meaningless to the outsiders, yet absolutely vital for the efficient conduct of business.⁴⁵

Thus, the problem of policy integration in Congress appears at three levels: 1) in each committee and sub - committee, 2) in each House as a whole, 3) between the two Houses.

Congress in Foreign Policy: Who Needs It? The Benefits of Congressional Involvement in Foreign Policy.

Activism, assertiveness, representation and accessibility are all great strengths of Congress. Congress is often better able and more willing than the executive branch to obtain a policy output from outside, from academia and from the private sector. Congressional involvement in foreign policy makes a decision to commit American troops abroad less likely, inhibits extralegal and covert activities, and makes bold departures less likely. Congress can help formulate policies, it can act to check the growing power of the Presidency, it can support the Presidency, and it can monitor the attitudes of the American people. Congress can inform and educate, and can convey the views of the people to the President.⁴⁶

Public scrutiny of the options is likely to yield better policy. Policy is subjected to a diversity of insights and political experience. Congressional representatives are more likely to reflect "real" interests. Congressional attention to international issues offers some hope of developing a public consensus which will support a positive American role in the world. Not only are policies scrutinised by Congress more likely to reflect public will, but members, once engaged in the policy making process should be better able to lead and teach their constituents through the complexities of international issues. And lastly, if Congress really does contribute actively to policy formulation, and if it really does help educate the public, the result should be greater stability and predictability in American politics.⁴⁷

To Conclude.

However, Congress is inevitably a reactive institution. It mirrors the nation's political life. Today's Congress is open, diffuse and fragmented. It lacks leadership and consensus, and its ideological or partisan commitments are uncertain. Rather than individuals affiliated to parties, there are individual politicians in business for themselves, and a series of shifting coalitions around specific issues. Rather than a few leaders or checkpoints of legislation, there are many.⁴⁸

Legislators themselves admit to being dissatisfied with committee government. In 1977, a survey of 153 House members identified the committee structure as the most frequently mentioned "obstacle" preventing the House from doing its job. Reforming the committee structure is the most commonly mentioned suggestion for improving Congress: forty-one per cent of those interviewed mentioned it.⁴⁹

Since 1970 the House has authorised two intensive studies of the committee system: the Bolling Committee, 1973 - '74 and the Patterson Committee, 1979

-'80.⁵⁰ According to the 1979 study by the Patterson Committee, over seventy per cent of the 184 responding members agreed that the committee system desperately needed major repair. The problem is how to reconcile democracy with hierarchy.

However, major change is resisted because it threatens to upset Congress' internal balance, jeopardising not only legislators' workgroup careers, but also their mutually advantageous linkages with outside clientele groups. Mann and Ornstein note, "subcommittee government mirrors the atomisation of political life in the country at large".⁵¹

Ultimately, in the arena of foreign policy Congress is simply not able to act to the benefit of foreign policy. Congress plays an important role but the disadvantages of legislative interference in foreign policy more than outweigh the advantages.

Footnotes, Chapter 5.

1. Quoted in, Richard Rose, The Postmodern President. The White House Meets The World, (Chatam, New Jersey, Chatam House Publishers Inc., 1988), p.17.

2. G.B. Galloway, Congress at the Crossroads, (New York, Thomas Y. Crowell, 1946), p.334.

3. Samuel C. Pattern, "The Sovereign Congress", Anthony King Ed., The New American Political System, (Washington D.C., American Enterprise Institute, 1983), p.177. Details from Ibid.

4. The overwhelming majority actually win re-election, something over 95%.

5. Including Chairman Church (Dem. Idaho).

6. James L. Sundquist, The Decline and Resurgence of Congress, (Washington, Brookings Institution, 1981) p.456.

7. Parochialism can also distort and influence the major decisions of the Congress, when representatives of particular districts reach positions of power. For example, a chairman of the House Naval Affairs Committee, when asked, 'Is it not a fact that a navy yard in your district will not accommodate our latest battleships?' - 'That is true, and that is the reason I have always been in favour of small ships'. Details in Ibid. p.452. See also Ibid. pp.447 - 454.

8. Ibid. p.442. and details.

9. Joel D. Aberbach and Bert A. Rockman, "The Overlapping Worlds of American Federal Executives and Congressmen", British Journal of Political Science, Vol.7, January, 1977, p.46. See also, James L. Sundquist, The Decline and Resurgence of Congress, op.cit. pp.442 - 447.

10. James L. Sundquist, The Decline and Resurgence of Congress, op.cit. p.445.

11. Leroy N. Rieselbach, "In the Wake of Watergate: Congressional Reform?", Review of Politics, no.36, 1974, p.374.

12. Quoted In James L. Sundquist, The Decline and Resurgence of Congress, op.cit. p.455.

13. Ibid. p.456.

14. As far back as 1885, Woodrow Wilson spoke of government by the standing committees of Congress.

15. In turn, biased recruitment patterns reinforced by long-term associations with clienteles outside the workgroups, yield decisions heavily predisposed toward the very interests under the committees' consideration.

16. In the wake of similar action in the Senate.

17. Roger H. Davidson, "Subcommittee Government: The New Channels for Policy Making", T. Mann and Norman J. Ornstein (Ed), The New Congress, (Washington, American Enterprise Institute, 1981), pp.118 - 119.

18. Success Rates of Bills in the House, 95th Congress

	introd.	reported.	report v.introd	passed	passed v.introd.
All bills	18,065	1,490	8.2%	1,615	8.9%
Singly	16,232	1,410	8.7%	1,560	9.6%
referred bills					
Multiply	1,833	80	4.3%	55	3.0%
referred					
Multiply					
referred as %	10.1	5.4	-	3.4	-
of all bills					

Taken from, Roger H Davidson, "Subcommittee Government: The New Channels for Policy Making", op.cit. p123. See also John Spanier and Eric M. Uslaner, Foreign Policy and the Democratic Dilemmas, (New York, Holt, Reinhart and Winston, 1982), pp.97 - 99.

19. An Amendment not directly connected to the bill under consideration.

20. Stanley J. Heginbotham, "Foreign Policy Information for Congress: Patterns of Fragmentation and Advocacy", Washington Quarterly, Vol.10, no3, Summer 1987, p.153.

21. Details from Ibid.

22. Ibid. p.154

23. Roger H. Davidson, "Subcommittee Government: The New Channels for Policy Making", op.cit.

24. James L. Sundquist, The Decline and Resurgence of Congress, op.cit. p.456. Ibid. p.109.

25. Roger H. Davidson, "Subcommittee Government: The New Channels for Policy Making", op.cit. p.114.

26. Personal Staffs: Senate and House

	Senate	House
1957	1,115	2,441
1967	1,749	4,055
1977	3,554	6,942
1981	3,638	7,487

Taken from Susan Webb Hammond, "Congress in Foreign Policy", in Edmund S. Muskie, Kenneth Rush and Kenneth W. Thompson (Ed), The President, The Congress and Foreign Policy, (New York, University Press of America, 1986), p.84.

27. For details regarding staffs, see Dom Bonafede, "White House Staffing: The Nixon - Ford Era", in Thomas E. Cronin and Rexford G. Tugwell (Ed), The Presidency Reappraised, (New York, Praeger, 1977), Chapter 8, Godfrey

Hodgson, All Things To All Men. The False Promise of the American Presidency, (London, Wdeienfeld and Nicolson, 1980), Chapter III, Hugh Heclo, "The Changing Presidential Office", in Arnold J. Meltsner (Ed), Politics and the Oval Office: Towards Presidential Governance, (San Fransisco, California, Institute for Contemporary Studies, 1981), David D. Newsom, "The Executive Branch in Foreign Policy, in Edmund S. Rush, Kenneth Rush and Kenneth W. Thompson (Ed), The President, The Congress and Foreign Policy, (New York, University Press of America, 1986), Chapter 4.

28. For revolt against seniority, see, Roger H. Davidson, "Subcommittee Government: The New Channels for Policy Making", op.cit. p.106, and for the history of the power and decline of the leadership in Congress, see James L.Sundquist, The Decline and Resurgence of Congress, op.cit. pp.103 - 106, Norman J. Ornstein,

29. For example, the tremendous public attention that Freshmen Senators DeConcini and Zornsky received when they opposed Carter's Panama Canal Treaty.

30. Lord Bryce, quoted in Aaron Wildavsky, "The Past and Future Presidency", in Aaron Wildavsky (Ed), Perspectives on the Presidency, (Boston, Little Brown and Company, 1975), p.56

31. Thus Congress is highly vulnerable to special interests, and is the arena in which those who oppose Presidential policies make their stand, for it is easier to stop changes in the legislative process and maintain the status quo, than to pass legislation to change the status quo.

32. For details, see Susan Webb Hammond, "Congress in Foreign Policy", in Edmund S. Muskie, Kenneth Rush and Kenneth W. Thompson (Ed), The President, The Congress and Foreign Policy, op.cit. and John Spanier and Eric M. Uslaner, Foreign Policy and Democratic Dilemmas, op.cit. pp.102 - 107.

33. Ibid. p.190.

34. Max Beloff (Ed), The Federalist, Or The New Constitution, (Oxford, Basil Blackwell, 1948), p.359

35. James L. Sundquist, The Decline and Resurgence of Congress, op.cit. p.157.

36. Even today, three-fifths of Senators are needed to terminate debate.

37. See Chapter 4 of thesis

38. James L. Sundquist, The Decline and Resurgence of Congress, op.cit. p.158.

39. Alvin Paul Drischler, "Foreign Policy Making On the Hill", Washington Quarterly, Vol.8, Part 3, Summer 1985, p.166.

40. In 1980 - '85, there was only one foreign assistance authorisation bill and one free-standing foreign operations appropriations bill.

41. Details from Caspar W. Weinbertger, "In Defence of the Presidency", Presidential Studies Quarterly, Vol.XVIII, no.1, Winter 1988, p.20.

42. Ibid. p.19.

43. Which had always been in the shadow of its prestigious counterpart in the Senate.

44. For example, the intricate rules governing debate, or the customs concerning the allocation of committee seats.

45. For details regarding the House and Senate, see L. N. Reiselbach, Congressional Politics, (New York, McGraw-Hill, 1973) and Ernest Griffith, The American System of Government, (London, Methuen, 1983), Chapters 4,5,6.

46. Lee H. Hamilton and Michael H. Van Dusen, "Making the Separation of Powers Work", Foreign Affairs, Vol.57, no.1, Fall, 1978, p.31.

47. Douglas J Bennett Jnr, "Congress in Foreign Policy. Who Needs It?", Foreign Affairs, Vol.57, no.1, Fall, 1978,

48. Roger H. Davidson, "Subcommittee Government: The New Channels for Policy Making", op.cit. p.131.

49. Ibid. p.132.

50. In the Senate, the Stevenson Committee, 1976 - '77, and its Commission on Administrative Review.

51. Roger H. Davidson, "Subcommittee Government: The New Channels for Policy Making", op.cit. p.133.

Chapter 6: Conclusion. No Prospect of Reform. Why America Must Strengthen the Presidency.

Irangate: A Symptom of the Dysfunction of the American System of Government.

"Ninety, if not one hundred per cent of the motivation for the clandestine contacts was the hope that they would lead to the return of the American hostages kidnapped in Beirut...The motive, in other words, was nothing to do with foreign policy in the usually accepted sense of the word. It was to do with a hostages - for - arms deal whose motivation was essentially rooted in domestic politics".¹

It took the shock of the Iran - Contra affair, the Administration's trading of arms for hostages and the diversion of the profits to fund the Contras² for Congress to recognise the failure of the post - Vietnam formula, the formula which in the wake of the Vietnam War and Watergate had been intended to prevent such executive abuses ever again.

However, Irangate is not an isolated episode in the history of the Presidency. Every modern President since Eisenhower has been lured by the prospect of dramatic actions abroad in compensation for the difficulties of implementing domestic politics. President Eisenhower's decision to invade Lebanon in 1958, Kennedy: Bay of Pigs in 1961, Johnson's incursion into the Dominican Republic in 1965 and Carter's diplomatic manoeuvres during Camp David are classic illustrations of Presidents tempted by a foreign policy coup to bolster political effectiveness at home. [It could be argued the President Reagan did not need to bolster his popularity in such a manner. However, one tends to forget the fact the he encountered almost as much difficulty getting his policies through Congress as Carter did, losing control of the Senate in 1986].

The President is inhibited by Congress, especially as a result of the post Vietnam War and Watergate legislative restrictions. His only option is to turn to foreign adventures. The separation of powers itself which by thwarting the President's efforts to build support for his programmes, isolates him and tempts him and his staff to dangerous political gambles to maintain his position.³

The Prospect of Reform.

"Under all circumstances, it is difficult not to feel that the President of the United States must envy the legislative position of the British Prime Minister".⁴

The Issue of Constitutional Reform.

America has amended the Constitution only sixteen times since 1789. Several of these amendments have been structural, for example, the direct election of Senators; but none have addressed the basic separation of powers doctrine. However, the question remains of how the partners of a forced loveless marriage between Congress and the President can come to live together with a reasonable degree of harmony and with enough unity of purpose to make government work.⁵

The Gamut of Reform Proposals:

	Structural	Focus	Procedural
Systemic	1. Parliamentary system 2. Parliamentary variants 3. Initiative and Recall 4. Council of State 5. Cabinet upgrading 6. National Planning Agency 7. Altered Presidential Selection 8. Six-year Presidential terms 9. Congressional Reform 10. Party - system overhaul.		1. War Powers Resolution 2. Budget and Impoundment Control Act (1974) 3. Campaign Finance Act (1974) 4. National planning bill (proposed 1975 and 1976) 5. Restriction of Executive privilege claims
Level			
Institutional	1. Collegial Executive 2. Limited size and function of Presidential staff 3. Strengthened Presidential planning and evaluation staffs		1. Explicit delegations of Presidential functions to staff 2. Requirement of Presidential powers impact - statements, specific reports with State of the Union message, and annual national - posture statement. 3. Multiple advocacy.

Source: Norman C. Thomas, "Reforming the Presidency: Problems and Prospects" in Thomas E. Cronin and Rexford G. Tugwell (Ed), The Presidency Reappraised, (New York, Praeger, 1977), p.328.

Structural Reform: the ayes and naves.

Many who have despaired of the American system of Government have looked toward the example of those Western European and British Commonwealth countries, where the Parliament is sovereign, and the legislative and executive branches united at the apex in a Cabinet that dominates the legislature and directs the Executive.⁷

In the twentieth Century, Congressional submission to Rooseveltian leadership aroused renewed debate on the issue of Constitutional reform. William Y. Elliot suggested that the terms of House members be extended to four years, concurrent with the President's, and that the executive be granted power to dissolve the House of Representatives once during his term.⁸

Henry Hazlitt proposed a Parliamentary system in which the executive would be chosen by the Congress. At any time the legislature could vote a lack of confidence in the executive, and the executive would have the choice of dissolving the House and calling new elections or simply resigning. In the new election, the executive and the legislature would have to run, and if the executive was defeated, the Congress could chose his successor.⁹

In 1945 Finletter proposed that the terms of Senators, Representatives and the President all be six years, with simultaneous election, that dissolution power be vested in the President, and in the event of dissolution, elections be held for the President and entire Congress.¹⁰

In 1966 President Johnson proposed the election of House members for four year terms, concurrent with that of the President. However, members argued that this would bind them too closely with the President.¹¹

The proposal for a Congressional no - confidence vote attempts to increase Presidential responsiveness and accountability, and shift the balance away from the President to the Congress. It would provide one means of ending any deadlock between the President and the Congress. However, in the wake of

Watergate and Nixon's demise, it was perceived that the impeachment process and the system of checks and balances worked.¹²

Cabinet Government in America.

In the 1870s and the 1890s, the notion of Cabinet Government gained prominence. The full development of Cabinet Government was analysed by Walter Bagehot in The English Constitution.¹³ It had a major influence on American political observers who compared the discipline and principles of British party leaders with the disunity and disloyalty of the American Congress. In normal times, Bagehot argued, cabinet government was more responsive, efficient and accountable to the party and the electorate. In crisis times, it was more flexible, for the Parliament, unlike the Congress, could replace one Prime Minister with another more able to deal with the situation.

Gamaliel Bradford, a member of the House, proposed a 'question period' to bring the Cabinet secretaries before Congress for interrogation.¹⁴ In 1879, George Pendleton recommended that the main officers of each of the executive departments occupy seats on the floor of both the House and the Senate. Pendleton was influential enough to gain the creation of a bipartisan select committee of ten to examine the proposal, and in 1881, his committee reported favourably on the measure. Although Pendleton's bill was not voted on that year, it was reintroduced at the start of the next Congress. However, by that time Pendleton had lost interest, concentrating rather on the Civil Service Reform Act of 1883, Bradford concluded that the question period reform never received the slightest attention from either house of Congress.¹⁵

Although a question period could result in increased accountability, it is also possible that it might lead to renewed executive efforts at secrecy, or the danger of too much exposure at the expense of legitimacy.

Recall Procedures.

The notion of mass referenda as suggested by the People's Lobby¹⁶ is not new and the technology exists to accommodate such a proposal. But who would decide the questions; what would happen if the voters adopted contradictory laws? ¹⁷

A Council of State.

The Constitutional Convention of 1787 considered the creation of a Council of State comprising the President, the Chief Justice, the President of the Senate, the Speaker of the House, and the heads of the executive departments. However, the proposal was rejected because the Convention believed that the President should be free to choose his own advisers.

In 1940 Corwin's, The President: Office and Powers proposed the construction of a cabinet from a joint Legislative Council to be created by the two Houses of Congress.¹⁸ However, a Council of State would merely increase the problem of fixing accountability.

Cabinet Upgrading.

In 1972 Thomas E. Cronin recommended the reorganisation of the executive branch with new departments of Community Development, Natural Resources, Human Resources and Economic Affairs, alongside existing departments of State, the Treasury, Defence, Justice and Agriculture. However, the problems of managing the existing super departments are already immense.¹⁹

National Planning Agency.

The intention would be to coordinate Presidential, Congressional and Executive branch responsibilities. Liberals argued that national economic planning would result in increased responsiveness and accountability. The Conservatives, however, regard this as a threat to economic freedom.²⁰

Altered Presidential Selection.

One of the most important reform proposals is that of a national direct primary for nominating Presidential candidates. Such a system would be far more open and public; would eliminate the risk of choosing a "dark horse" (a Presidential candidate unknown to a large part of the public, initially supported by only a minority of activists.) Other advantages would be reduction in the inordinate length of the selection process and the tremendous cost of campaigning in state after state. It would probably cut down the 'bandwagon' effect whereby a few unexpected successes in early primaries can produce a surge of momentum.

However, there are major drawbacks. It is likely that the direct national primary would sound the death knell for a national party system. National primaries would also be heavily biased in favour of candidates already well established and familiar to the public. There would be no opportunity for others to gain public recognition through their performances in a series of state primaries. It is also unlikely that the individualistic and parochial interests of states will be easily overcome. Norman C. Thomas writes, "Unfortunately, none of the reforms relating to the selection of the President appears directed toward broadening the national cast for potential nominees or improving the quality of the people ultimately chosen to serve as President and Vice - President".²¹

One Six Year Term.

There are several advantages to this proposal: Firstly, it would enable the President to devote all his time to his task. A President begins his re-election campaign earlier and earlier. For example, on July, 31st, 1979, the Washington Post announced that President Carter had begun his campaign for re-election - after thirty months in the White House. With one six year term the President would be able to devote his full attention to the job. Lowi

states, "everything that can be said in favour of the single six year term boils down to the single argument that politics should be taken out of the office".²²

However, the President would be a lame duck from the moment of his election. He would still be compelled to engage in political bargaining in order to establish winning coalitions. It would also reduce Presidential accountability; and if four years is supposedly insufficient time for the implementation of the President's plans, there is no guarantee that six years will be sufficient. The major argument against single six year term, however, is the fact that single term limitations are strongly associated with corruption. In America it would be an especially corrupting situation due to the lack of a party ticket and exacerbated by the absence of the time perspective produced by the prospect of re-election.²³

Congressional Reform.

As has been seen in Chapter 3 the 1970s witnessed a resurgence of Congress. Unfortunately, often the outcome and consequences were the opposite of what was intended.

Two differing, and to a large degree incompatible, perspectives characterise those who seek to reform Congress. On the one hand, those who value prompt, efficient solutions to policy problems seek to advance toward a more centralised legislature. They are prepared to forego openness and multiple channels of communication; they are prepared to rely upon citizen-enforced accountability to keep a powerful executive in line.

On the other hand, there are those, just as committed to reform, who place ultimate value on a free, open and deliberative process, and are prepared to endure decentralisation, irresponsibility, slow decision-making and compromise as the price required to guarantee responsiveness. They rely on the ability of the citizen, individually or in organised groups, to present his views prior to policy formulation. ²⁴

Party Reform.

The revitalisation of the political parties would be an enormous undertaking. The long - term trend during the Twentieth Century has been the decline of the political party. Since 1952 the Presidential nominees of the two major parties have divorced the management of their campaigns from the operations of the national committees of their parties. The party organisation remains fragmented and decentralised.

One of the reform proposals aimed at restoring the convention system, provides that up to one third or even one half of the delegates be chosen by state party leaders without going through a public selection process at all as happened in 1988. The argument is that this would permit some of the real coalition building that was once a natural and vital feature of party government.

However, it is doubtful whether this could revitalise the two major parties to any great degree; many conditions now exist, especially big government itself, which are inhospitable to parties and especially the two - party system. Today, the political party is less of an organisation with a life of its own, and more of an arena in which other actors pursue their interests. Party identification has dropped sharply, party voting has declined and partisan consistency in voting is decreasing.²⁵

Procedural Systemic Reforms.

Most reforms adopted in the past two decades have dealt with government procedures rather than structural arrangements, for example, the War Powers Resolution and the Budget and Impoundment Control Act. However, such reforms appear destined to fail. As Chapter 4 demonstrated the War Powers Resolution is little more than symbol.²⁶

Structural Institutional Reforms.

Collegial Executive.

The rationale behind this proposal is that the burdens of the office are so great that they should be placed on more than one head. However, there is the prospect of conflict and competition within the executive, lack of accountability and a diffusion of responsibility. The notion of a collegial executive has attracted little support.²⁷

Limited Size and Function of Presidential Staff.

This thesis argues that the principal functions of the White House staff and the E.O.P. units should be to assist and advise the President. However, this requires Presidential compliance of the notion that he reduce his power.

Procedural Institutional Reform.

Explicit Delegations of Presidential Functions to Staffs.

Specifically, proponents of this reform call for the publication in the Federal Register of:

- (1) functions assigned to White House units,
- (2) names and duties of White House personnel,
- (3) delegations of authority within the E.O.P.,
- (4) titles of officials to whom the delegations have been made.

Also suggested: A Presidential Powers Impact Statement Act which would require an analysis by the executive branch and Congress of the impact of each important new legislative programme on the powers of the Presidency, and a Presidentially prepared annual national posture statement that compares executive branch programme performance with stated goals.²⁸

Multiple Advocacy.

This proposal calls for decisional processes that guarantee that the President will receive diverse and varied information and critical analysis of the main policy alternatives before taking important decisions.²⁹

Success, however, would depend on Presidential personality and leadership style.

The Inevitability of Failure.

The eternal question addressed by such proposals is how, institutionally, the executive branch and the Congress might reorganise themselves to facilitate better relations and cooperation and more coherent and consistent policy. In 1973 the Commission on the Organisation of the Government for the Conduct of Foreign Policy was established to address the problem.

The Commission supported the War Powers Resolution, encouraged the Senate to exercise more authority in the confirmation of executive branch appointees and oversight in general. To increase Congressional participation in the conduct of foreign affairs, the Commission majority recommended the establishment of a Joint Committee on National Security as a counterweight to the N.S.C. Abshire states, "The Commission proposal implied that if Congress wanted true consultation, it had better organise itself for such consultations".³⁰

Senator Mike Mansfield, a member of the Commission contended that such a committee would inevitably fall under executive branch influence; in contrast, fellow Commission member, Rockefeller argued that power had shifted too much toward a decentralised Congress. In the end, the disagreements overshadowed any agreement. The majority of the Commission stood somewhere between Mansfield and Rockefeller, the both of whom never actually met face to face, or compromised their positions. The essence of

the debate was Presidential versus Congressional government - the eternal debate.³¹

The influential Committee on the Constitutional System, chaired by Nancy Landon Kassebaum, Lloyd N. Cutler and C. Douglas Dillon undertook an assessment of the Constitution. The Committee concluded that the Founding Fathers' system of checks and balances now impeded the solution of urgent problems. The system certainly protects against the abuse of power, but it also diffuses accountability. As such, the Committee recommended:

- (1) extend terms of House members to four years and Senators to eight years and place all Congressional elections in Presidential election year,
- (2) enable members of Congress to serve in the Cabinet and other executive positions,
- (3) to make it easier to ratify treaties by reducing the present two - thirds vote in the Senate to sixty per cent or require a simple majority in both Houses,
- (4) authorise Congress to set limits on campaign spending. ³²

The Misguided Nature of Reform.

It is naive to imagine that any basic revision of the executive or legislative could be made at this advanced stage in the nation's development. Sundquist writes, "However grave the structural weaknesses of American government, those that are embedded in the Constitution are quite beyond the reach of the reformers".³³ The amendment process is so formidable that any fundamental change that arouses controversy and determined opposition is bound to fail. A proposal can be blocked by one - third plus one of the membership of either House, or, by as little as one - eighth of the nation's state legislative bodies.

Basic change is impossible. For example, the formal merger of the legislative and executive powers in a joint Cabinet or Council is counter to

the self - interest of members in each branch in maintaining their freedom of decision and independence of action within their respective spheres.

The boundaries between the President and the Congress are constantly in flux. No rules can fix in advance the nature of the game; Congress can only play with rules. The emphasis on the abuse of power tends to divert attention away from the legitimate exercise of power within the executive branch. Congress must bow out of the arena of foreign affairs and admit defeat in the face of superior executive capabilities.

The inevitable failure of reform necessitates one thing: America must strengthen the Presidency. As has been demonstrated earlier in this chapter, Constitutional reform is inconceivable while every other option is more detrimental than beneficial to the American system of government. Thus the only solution is for strong Presidential leadership within the Constitution. As was seen in Chapter 1 (Hypothesis II) it is possible that the Presidency was intended to be the pre-eminent branch of government anyway. Congress must allow the President to exercise that leadership. By submitting to Presidential leadership Congress is merely fulfilling the wishes of the Founding Fathers. The President has great resources and Congress must not circumvent that potential.

The Strenghts of the Presidency

Leadership.

"One of the most universal cravings of our time is a hunger for compelling and creative leadership".³⁴

"The cure for democracy is leadership".³⁵

Congress lacks the leadership capability in foreign policy matters. In the Presidential Leadership model, it is the President who mobilises resources. Burns states, "Leadership in the Presidency means identifying and enunciating national values of liberty and equality, confronting 'overriding' moral and social issues facing the country".³⁶ In the Presidential leadership model as detailed in Chapter 2 ("1960 School"), it is the President who sets the direction of the country, who proclaims the policies and programmes he believes will move the nation toward its goals. The lack of leadership becomes a campaign issue and a President's challengers will seek to displace or succeed him by promising the strong assertive leadership that the people want. Thirty years after the emergence of the "1960 School" one perceives the wisdom of its writers.

The institutional structure of Congress and its patterns of behaviour have evolved to enable it to follow and respond, but not to lead. At all such times, when the Presidential Leadership model has been rejected, there has been no alternative model of Congressional leadership. Even when voters give the President an uncooperative Congress, the President remains the only source of effective leadership. Stronger Congressional leadership is not the answer either. Even if the trend of recent decades could somehow be reversed, and the centralised power stripped from Cannon and Aldrich³⁷ be

restored to their successors, the new leaders could still not speak for all the people.

To give the country a sense of progress toward any of its accepted goals, leadership must mobilise institutional, psychological and political resources, and the executive is well designed for this purpose. With its hierarchical structure, it can represent the diverse views of the many departments and agencies and reconcile them in the E.O.P., with the point of decision in the chief executive himself. If, on any given policy situation, it flounders in indecision for months, if it is deadlocked by internal policy conflicts, or if it succumbs finally to the demands of narrow interests and its final decision is the outcome of compromise, all these weaknesses are likely to remain concealed. The first the public at large hears of a policy decision is when the President announces it. Then he speaks with decision and authority, and his presentation is well organised and systematic.

In contrast, Congress does its floundering in the glare of publicity. Every conflict, delay and deadlock is arrived at in the open, as is every concession to the lobbyist. Also, Congress - unlike the executive branch - is bipartisan, which means that on the inside of its deliberations at every stage, is a minority intent on discrediting the majority, exposing disputes and indecision.

The fact remains that the executive branch does have the capability of being more decisive than the legislative branch simply because it is a hierarchy. Congressional action is generally less flexible and tends toward a blanket approach; it is far too responsive to public opinion. Congress, overloaded with the domestic arena alone, has difficulty in formulating overall policy.

In the nature and mandate of the office of the President, as Commander-in-Chief of the armed forces and as the principal governmental officer

responsible for policy execution, the President is at the centre of American political life. The American people look to the President for leadership and regard him as their representative before the world. The people look to the President first and foremost to articulate and support the national interest.

The very organisation of the executive branch means that authority is centralised in one man, resulting in an ability to view the whole picture. Thus, decision-making can be rapid and the execution of policy making immediate. The executive branch also has unparalleled access to information to information and expertise. The executive can integrate negotiations and other options in a way which Congress cannot, and it can act with greater secrecy when it is genuinely needed.

Whatever the theoretical shortcomings of the American system of government, in fact, the Presidency works well. The process of selection is thorough and democratic. Only men of rare stamina and political maturity can survive the grueling test of Presidential campaigns.

The Weakness of the Presidency.

Hamilton and Van Dusen argue that foreign policy bureaucracies are relatively inaccessible to the people. The attitude that the executive branch is best suited and equipped to conduct foreign relations has led many in the executive branch to look upon Congress as a nuisance, and upon Capital Hill as enemy territory.³⁸

Franck and Weisband state, "the fiasco of the Vietnam War tested the proposition that extraordinary times require management by extraordinary men endowed with extraordinary powers".³⁹ The Vietnam War was conducted by an executive vested with virtually unlimited power, and until 1973, largely free from "checking and balancing". However, critics of the Congressional

revolution argue that it has gone too far. They charge that the legislators have gone too far. They charge that the legislators have destroyed the nation's ability to act decisively, and have "mired policy - making in a legal morass".⁴⁰

In a democracy, legislation is the most public aspect of the foreign policy making processes. Its most prominent characteristic is publicity, followed by legitimacy, immutability, comprehensiveness and universality of application. These aspects can be of value or detrimental to the policy being pursued, depending on the circumstances. For example, immutability - resistance of the law to change, is a quality of great value in assuring allies of American commitment. However, legislative prohibition on the use of force in, over, or off Indochina may have been justified in the historic context, but it created the dysfunctional certainty of American policy when policy interest might better have been served by flexibility.⁴¹

Why America Must Strengthen the Presidency.

"Nothing great is done without great men".⁴²

"Great power makes great leadership possible".⁴³

"Political leadership is the creation of myths".⁴⁴

Only five years after Watergate came calls from political observers for new measures to bolster the Presidency. One term of a more submissive, unassertive and even unassuming Presidency, that of Carter, and many Americans soon realised that it desperately needed the decisive leadership and confident posture that only a vigorous President could supply. Even as the Presidency was being soundly criticised for the abuses of power of the late 1960s and early '70s, it was simultaneously portrayed by many as

alarmingly weakened by the Vietnam War and Watergate. Michael Novak once remarked, "the Right worries about the imperial Presidency at home, and the Left worries about the imperial Presidency abroad".⁴⁵ However, Cronin adds that what Novak does not say is that the Right doubtless want a near imperial Presidency abroad and the Left, something approaching an imperial Presidency at home.⁴⁶ A weakened Presidency weakens America's ability to defend and protect its interests abroad.

Momentarily, the American people may have lost confidence in its leaders, but it never lost faith in the value of strong, purposive leadership. A Gallop poll in 1976, only two years after Watergate, asked a national sample: "Do you think that what the country needs is really strong leadership that would try to solve problems directly without worrying about how Congress or the Supreme Court might feel, or do you think such leadership might be dangerous?" By a 49% - 44% margin, respondents indicated a preference for a strong government over a Constitutional one. Fear of another Watergate had quickly disappeared.⁴⁷

If political thinkers had worried about an imperial Presidency, it also worried about an imperial Congress. The majority of commentators doubted that in the wake of the wounded Presidency of Watergate, that Congress could furnish the leadership necessary to govern.⁴⁸

Presidential primacy is founded on the imperatives of the American condition: the continued state of emergency, global competition and the anarchical international system emphasise the need for speed, efficiency and unity of government; social, urban and environmental problems require a persistent display of creative Presidential leadership. Gordon states, "the American Presidency is the high office which holds the best hope for meeting and overcoming a time when crisis appears destined to become a chronic condition of American life".⁴⁹ The Presidency provides leadership and guidance.

Weinberger in 1987 argued that the security and advancement of American interests was paramount. However, America's ability to set its own agenda is far more limited than in the domestic arena. The international environment is unpredictable. America must be alert to deter, respond to and resist, and there is often little or no time for debate. If the United States fails to take timely action, it does more than send allies and enemies a signal of indecision. There is also the risk of blundering more deeply into danger, by losing the best opportunity for early and effective action. Even the Founding Father most wary of excessive executive power, Thomas Jefferson assumed the President's primacy in foreign affairs: the transaction of business with foreign nations is "executive altogether"(1790).⁵⁰

Defenders of a powerful Presidency have debated how a government could conduct a coherent foreign policy if legislative ascendancy really did mean the development of Congress into a second American government. The American nation, however, cannot afford to have two foreign policies. A nation cannot long retain a leadership role in the world unless its own leadership is clear and decisive. Huntington urges the recognition of the legitimacy and necessity of 'hierarchy, coercion, discipline, secrecy and deception - all of which are in some measure, inescapable attributes of the process of government".⁵¹

Contrary to the political maxim that power abhors a vacuum, it is simply not the case that power removed or stripped away from one branch will find a home in another.⁵² When a President is unable to exercise authority, no one else has been able to supply comparable purpose and initiative. Even as Schlesinger was condemning the imperial Presidency, he conceded, "history has shown the Presidency to be the most effective instrumentality for justice and progress".⁵³ Only the President has the national perspective which allows him to plan comprehensively. Cronin writes, "without strong Presidential leadership, the parochialism in Congress is so profound and insidious and unrelenting that Congress is not a good institution to place

our hopes for the future".⁵⁴ Congress rather than balancing Presidential powers has often simply blocked needed Presidential actions because of localised self-interest.

Americans still long for dynamic and strong leadership. It is still the Jeffersons, Jacksons and Roosevelts that are considered great Presidents. Sundquist contends, 'the day of the strong President is here to stay. It is a necessity of the times. People want it that way...The great Presidents are the men who built the Presidency and made a practice of kicking Congress around'.⁵⁵

Cronin points out that however much the public may want Congress to be a major partner with the President, and a major check on the President, the public's support for Congress will always be subject to deterioration. Power is much dispersed in Congress, its deliberations and quarrels are very open. With time the public begins to view Congress as the 'bickering branch' or the 'policy thwarting' branch. Then the people will again look to the President for inspiration.⁵⁶ The President is the one constant; the key to an effective and successful future.

There is the risk of stripping away the President's power without seeming to realise that the United States has no other institution to whom those powers can be transferred.

The Presidency is the focal point of national life. He is the only official elected to office by a national vote. He is the only official who has the "right" to speak as the representative of the United States to other states. He is the only official who can come close to mobilising the total economic, social and political power of the nation. Without a strong President, "we will revert to the kind of government that the United States had under the Articles of Confederation, a government so incapable of effective action that the delegates who gathered [here] 200 years ago determined at once to abolish it".⁵⁷

Chapter 6: Footnotes.

1. Godfrey Hodgson, "Not For The First Time: Antecedents of the 'Irangate' Scandal", Political Quarterly, Vol.58, no.2, April - June 1987, p.132
2. For details and analysis of the Iran - Contra Affair see, Godfrey Hodgson, "Not For The First Time: Antecedents of the 'Irangate' Scandal", op.cit., Kenneth E. Sharpe, "The Real Cause of Irangate", Foreign Policy, Fall 1987, Donald F. B. Jameson, "The 'Iran Affair', Presidential Authority and Covert Operations", Strategic Review, Part 1, winter 1987.
3. Details from Godfrey Hodgson, "Not For The First Time: Antecedents of the 'Irangate' Scandal", op.cit.
4. Harold J. Laski, The American Presidency. An Interpretation, (London, George Allen and Unwin Ltd, 1952), p.118.
5. James L. Sundquist, The Decline and Resurgence of Congress, (Washington, Brookings Institution, 1981), p.462.
6. The two variables involved are level and focus. The level is either elements of the political process or, at a lower level, with the institution of the Presidency. The Focus is either on government structure or on procedures which takes place within that government structure.
7. The Nineteenth Century produced much debate for the revision of the American Constitution in the direction of Parliamentary government, the most notable of which was Woodrow Wilson's Congressional Government: A Study in American Politics, (New York, World, 1956).
8. See James L. Sundquist, The Decline and Resurgence of Congress, op.cit. p.464.
9. Henry Hazlitt, A New Constitution Now, (New York, 1942)
10. Thomas K. Finletter, Can Representative Government Do The Job? (New York, Reynal and Hitchcock, 1945)
11. Ostensibly he argued, to reduce the burden and cost of campaigns every two years and because more voters turn out for a Presidential election. "Special Message to the Congress Proposing Constitutional Amendment Relating to the Terms for House Members and the Electoral College System, Jan.20 1966", Public Papers of the Presidents: Lyndon B. Johnson, 1966. (U.S. Govt. Printing Office, 1967).
12. Main advocates being James L. Sundquist and Representative Reuss of Wisconsin who in 1974 introduced a proposed Constitutional amendment that would have established it. (H.J. Res.IV. Aug. 15 1974).
13. First published in 1873. Walter Bagehot, The English Constitution, (Ithica, Cornell University Press, 1966).
14. See Richard M. Pious, "Congressional Power", Proceedings of the Academy of Political Science, no.34, 1981 - 1982, p.47.
15. Idem.

16. A California populist organisation.
17. Details see, Norman C. Thomas, "Reforming the Presidency: problems and Prospects", op.cit. p.330.
18. Edward Corwin, The President: Office and Powers, 4th Ed. (New York, New York University Press, 1957) p.297.
19. Thomas E.Cronin, The State of the Presidency, (Boston, Little Brown, 1975), p.272.
20. Details from Norman C. Thomas, "Reforming the Presidency: Problems and Prospects", op.cit. p.332.
21. Ibid. pp.332.
22. Theodore J. Lowi, "Presidential Power: Restoring the Balance", Political Science Quarterly, no.100, 1965 - 1986. p.197.
23. Idem. See also Norman C. Thomas, "Reforming the Presidency: Problems and Prospects", op.cit. p.333.
24. Leroy N. Rieselbach, "In the Wake of Watergate: Congressional Reform?", Review of Politics, no.36, 1974, p.385. For fuller details, see Chapter 3 of thesis.
25. Norman C. Thomas, "Reforming the Presidency: Problems and Prospects", op.cit. p.335.
26. Ibid. pp.336 - 337.
27. Ibid. p.338.
28. Ibid. p.339.
29. Also Janus points to the problem of 'groupthink' in decision-making bodies which results from pressures toward conformity and tendencies to suppress undesired information.
30. David M. Abshire, Foreign Policy Makers: President Vs Congress, The Washington Papers, (London, Sage Publications, 1979), p.66.
31. Details, Ibid. pp.65 - 68.
32. For details, see Raymond A Moore, "The Constitution, The Presidency and 1988", Presidential Studies Quarterly, Vol.XVIII, no.1, winter 1988, p.56.
33. James L. Sundquist, The Decline and Resurgence of Congress, op.cit. p.466.
34. James Macgregor Burns, Leadership, (New York, Harper and Row Pubs, 1978), P.1.
35. Ibid. p.340.
36. Ibid. pp.389 - 90.
37. Joseph G. Cannon was the Speaker of the House and in 1910 the House suspended the Speaker's power to make committee assignments and schedule floor debates. The majority leader of the Senate achieved the peak of his

power during the 62nd Congress when Nelson W. Aldrich held that office. Under "Aldrichism" the floor leader named the committees and dominated the Senate.

38. Lee H. Hamilton and Michael H. Van Dusen, "Making the Separation of Powers Work", op.cit. pp.32 -33.

39. Thomas M. Frank and Edward Weisband, *Foreign Policy by Congress*, (Oxford, Oxford University Press, 1979), p.155.

40. Idem.

41. Ibid. p.159.

42. President de Gaulle, quoted in Richard M. Nixon, Leaders, (London, Warner Books, 1982), p.320.

43. Harold J. Laski, quoted in Thomas E. Cronin, "An Imperiled Presidency", Society, Vol.16, no.1, November/December 1978, p.61.

44. Richard M. Nixon, Leaders, op.cit. p.329.

45. Quoted in Thomas E. Cronin, "An Imperiled Presidency", op.cit. p.61.

46. Idem.

47. Idem.

48. In 1977, Gerald Ford scoffed at the notion that Congress had improved in the wake of Congressional resurgence. Advocating the repeal of the War Powers Resolution, Ford argued that when a crisis breaks out, it is impossible to draw Congress into the decision-making process in an effective way. He argued: (1) legislators have too many other concerns to be abreast of foreign policy situations, (2) it is impossible to wait for a consensus among scattered and often disagreeing Congressional leaders, (3) sensitive information supplied to legislators, may be disclosed, (4) consultations with Congressional leaders do not necessarily bind the rest of Congress. See, Thomas E. Cronin, "An Imperiled Presidency", op.cit. p.61.

49. Mark Steven Gordon, "The American Presidency in the 1980s: The Challenges of Four Core Problems", Presidential Studies Quarterly, no.10, 1980, p.610.

50. Jefferson advised Washington.

51. Quoted in Thomas E. Cronin, "An Imperiled Presidency", op.cit. p.61.

52. Caspar W. Weinberger, "In Defence of the Presidency", op.cit. p.21

53. Thomas E. Cronin, "An Imperiled Presidency", op.cit. p.62

54. Quoted, Idem.

55. Ibid. p.63

56. Thomas E. Cronin, "An Imperiled Presidnecy", op.cit. p.64.

57. Caspar W. Weinberger, "In Defence of the Presidency", op.cit. p.21

Appendix 1

"A Joint Resolution to Promote the Maintenance of International Peace and Security in Southeast Asia" (The Gulf of Tonkin Resolution)

Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbours and the nations joined with them in the collective defence of their freedom; and

Whereas the United States is assisting the people of southeast Asia to protect their freedom and has no territorial, military, or political ambitions in the area, but desires only that these peoples be left in peace to work out their own destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America assembled in Congress, That the Congress approves and supports the determination of the President, as Commander-in-Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

Section 2. The United States regards as vital to its national interests and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution and the Charter of the United Nations and in accordance with the obligations under the Southeast Asia Collective Defence Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defence Treaty requesting assistance in the defence of its freedom.

Section 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by the action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.

Appendix 2

Public Law 93 - 148
93rd Congress, H.J. Res. 542
November 7, 1973

Joint Resolution

Concerning the war powers of Congress and the President.

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled,

Short Title

Section 1. This resolution may be cited as the "War Powers Resolution".

Section 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgement of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all the laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The Constitutional Powers of the president as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by an attack on the United States, its territories or possessions, or its armed forces.

Consultation

Section 8. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

Reporting

Section 4.(a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced-

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth-

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the Constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its Constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

Congressional Action

Section 5.(a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 80 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as the result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), that any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

Congressional Priority Procedures For Joint Resolution or Bill

Section 6.(a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign

Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the opponents and the proponents), and shall be voted on within three calendar days thereafter, unless such House shall determine by the yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless each House shall determine by the yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by the both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event that the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be enacted on by both Houses not later than the expiration of such sixty-day period.

Congressional Priority Procedures for Concurrent Resolution

Section 7.(a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any such concurrent resolution so reported shall become the pending business of the House in question (in the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted upon within three calendar days thereafter, unless such House otherwise determine by the yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

Interpretation of Joint Resolution

Section 8.(a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred-

(1) from any provision of law (whether or not in effect before the date of enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of the United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date,

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution-

(1) is intended to alter the Constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

Separability Clause

Section 9. If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

Effective Date

Section 10. This joint resolution shall take effect on the date of its enactment.

Appendix 3

Public Law 98 - 119, the Multinational Force in Lebanon Resolution.

Public Law 98 - 119 - October 12, 1983.

Public Law 98 - 119
98th Congress

Joint Resolution

Providing statutory authorisation under the War Powers Resolution for continued United States participation in the multinational peacekeeping force in Lebanon in order to obtain withdrawal of all foreign forces from Lebanon.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Short Title

Section 1. This joint resolution may be cited as the "Multinational Force in Lebanon Resolution".

Findings and Purpose

Section 2. The Congress finds that-

(1) the removal of all foreign forces from Lebanon is an essential United States foreign policy objective in the Middle East;

(2) in order to restore full control by the government of Lebanon over its own territory, the United States is currently participating in the multinational peacekeeping force (hereafter in the resolution referred to as the "Multinational Force in Lebanon") which was established in accordance with the exchange of letters between the governments of the United States and Lebanon dated September 25, 1982;

(3) the Multinational force in Lebanon better enables the government in Lebanon to establish unity, independence, and territorial integrity;

(4) progress toward national political reconciliation in Lebanon is necessary; and

(5) United States Armed Forces participating in the Multinational Force in Lebanon are now in hostilities requiring authorisation of their continued presence under the War Powers Resolution.

(b) The Congress determines that the requirements of section 4(a)(1) of the War Powers resolution became operative on August 29, 1983. Consistent with section 5(b) of the War Powers Resolution, the purpose of this joint resolution is to authorize the continued participation of United States Armed Forces in the Multinational Force in Lebanon.

(c) The Congress intends the joint resolution to constitute the necessary specific statutory authorisation under the War Powers Resolution for continued participation by United States Armed Forces in the Multinational Force in Lebanon.

Authorisation for Continued Participation of United States Armed Forces in the Multinational force in Lebanon

Section 3. The President is authorised, for purposes of section 5(b) of the War Powers Resolution to continue participation by United States Armed

Forces in the Multinational Force in Lebanon, subject to the provisions of section 6 of the joint resolution. Such participation shall be limited to performance of the function, and shall be subject to the limitations, specified in the agreement establishing the Multinational Force in Lebanon as set forth in the exchange of letters between the governments of the United States and Lebanon dated September 25th, 1982, except that this shall not preclude such protective measures as may be necessary to ensure the safety of the Multinational Force in Lebanon.

Reports to the Congress

Section 4. As required by section 4(c) of the War Powers Resolution, the President shall report periodically to Congress with respect to the situation in Lebanon, but in no event shall he report less often than once every three months. In addition to providing the information required by that section on the status, scope, and duration of hostilities involving United States armed Forces, such reports shall describe in detail-

- (1) the activities being performed by the Multinational Force in Lebanon;
- (2) the present composition of the Multinational Force in Lebanon, including a description of the responsibilities and deployment of the armed forces of each participating country;
- (3) the results of the efforts to reduce and eventually eliminate the Multinational Force in Lebanon;
- (4) how continued participation in the Multinational Force in Lebanon is advancing United States foreign policy interests in the Middle East; and
- (5) what progress has occurred toward national political reconciliation among all Lebanese groups.

Statements of Policy

Section 5(a) The Congress declares that the participation of the armed forces of other countries in the Multinational Force in Lebanon is essential to maintain the international character of the peacekeeping function in Lebanon.

(b) The Congress believes that it should continue to be the policy of the United States to promote continuing discussions with Israel, Syria, and Lebanon, with the objective of bringing about the withdrawal of all foreign troops from Lebanon and establishing an environment which will permit the Lebanese Armed Forces to carry out their responsibilities in the Beirut area.

(c) It is the sense of the Congress that, not later than one year after the date of enactment of this joint resolution and at least once a year thereafter, the United States should discuss with other members of the Security Council of the United Nations the establishment of an United Nations peacekeeping force to assume the responsibilities of the Multinational Force in Lebanon. An analysis of the implications of the response to such discussions for the continuation of the Multinational Force in Lebanon shall be included in the reports required under paragraph (8) of section 4 of this resolution.

Duration of Authorisation for United States Participation in the Multinational Force in Lebanon

Section 6. The participation of the United States Armed Forces in the Multinational Force in Lebanon shall be authorised for purposes of the War Powers Resolution until the end of the eighteen month period beginning on the date of enactment of this resolution unless Congress extends such authorisation, except that such authorisation shall terminate sooner upon the occurrence of any one of the following:

(1) the withdrawal of all foreign forces from Lebanon, unless the President determines and certifies to Congress that continued United States Armed Forces participation in the Multinational Force in Lebanon is required after such withdrawal in order to accomplish the purposes specified in the September 25, 1982, exchange of letters providing for the establishment of the Multinational Force in Lebanon; or

(2) the assumption of the United States or the Government of Lebanon of the responsibilities of the Multinational Force in Lebanon; or

(3) the implementation of other effective security arrangements in the area; or

(4) the withdrawal of all other countries from participation of the Multinational Force in Lebanon.

Interpretation of the Resolution

Section 7. (a) Nothing in this joint resolution shall preclude the President from withdrawing United States Forces participating in the Multinational Force in Lebanon if circumstances warrant, and nothing in this joint resolution shall preclude the Congress by joint resolution from directing such a withdrawal.

(b) Nothing in this joint resolution modifies, limits or supercedes any provision of the War Powers Resolution or the requirement of section 4(a) of the Lebanon Emergency Assistance Act of 1983, relating to the Congressional authorisation for any substantial expansion in the number or role of United States Armed Forces in Lebanon.

Congressional Priority Procedures for Amendments

Section 8. (a) Any joint resolution or amendment introduced to amend or repeal this Act shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be. Such joint resolution or bill shall be considered by such committee within fifteen calendar days and may be reported out, together with its recommendations, unless such House shall otherwise determine pursuant to its rules.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by the yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by the yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

Approved October 12, 1983.

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